GIBRALTAR

HOUSE OF ASSEMBLY

HANSARD

13TH FEBRUARY, 1997

**(adj to 25th February 1997,
17th March 1997 and
1st April 1997)**

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Fifth Meeting of the First Session of the Eighth House of Assembly held in the House of Assembly Chamber on Thursday the 13th February, 1997, 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 Building and Works
The Hon K Azopardi - Minister for the Environment and Health
The Hon Miss K Dawson - Attorney-General
The Hon T J Bristow - Financial and Development Secretary

OPPOSITION:

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

ABSENT:

The Hon Miss M I Montegriffo

IN ATTENDANCE:

D J Reyes, Esq, ED - Clerk of the House of Assembly

PRAYER

Mr Speaker recited the prayer.

CONFIRMATION OF MINUTES

The Minutes of the Meeting held on the 25th November 1996, having been circulated to all hon Members, were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

HON H A CORBY:

The Hon the Minister for Social Affairs laid on the table the accounts of the John Mackintosh Homes for the year ending the 31st December 1993.

Ordered to lie.

HON CHIEF MINISTER:

Mr Speaker, on a point of order, there is a motion of which notice has been given by the Leader of the Opposition in relation to the matter of the closure of the shiprepair yard at Kvaerner. Ordinarily, because that is Opposition business, that motion would not be taken until the end of this meeting which would certainly not be today and indeed may not be this week. I therefore move that Standing Orders be suspended and that under Order 7(3) the order of business be altered so that the Leader of the Opposition's motion is taken at 2.30 this afternoon.

Question put. Agreed to.

ANSWERS TO QUESTIONS

HON J J BOSSANO:

Mr Speaker, Miss Montegriffo is not able to be present due to a serious illness in the family and Mr Baldachino will be asking the questions on her behalf.

The House recessed at 11.55 am.

The House resumed at 2.30 pm.

MR SPEAKER:

Early this morning the Standing Orders of the House were suspended to enable a motion, notice which had been given by the Leader of the Opposition, to take it at 2.30 pm. It is 2.30 pm.

PRIVATE MEMBERS' MOTION

HON J J BOSSANO:

Mr Speaker, I beg to move the motion of which I have given notice, namely that, "This House is deeply concerned by the decision of Kvaerner to cease operating the Gibraltar shiprepair facilities because it has been unable to obtain the agreement of TGWU to new working conditions for its industrial employees.

It considers that the continuation of shiprepairing is an essential element in Gibraltar's economic development and calls on both sides of the industry to spare no effort during the consultation period to avoid the intended redundancies.

It further considers that both sides of this House should use their good offices and work towards ensuring there continues to be a shiprepair facility at the Gibraltar dockyard."

Mr Speaker, the shipyard which is now operated by Kvaerner started off life as a commercial activity with the closure of the naval dockyard. The changes that it has been subjected to have no parallel in any other industry in Gibraltar. Initially, it started off with a management agreement with A&P Appledore and I think it is worth recording, that when the decision was being taken on the creation of a commercial facility, a study that was commissioned prior to this decision had in its elements suggesting that for Gibraltar to operate competitively in the world shiprepair market drastic reductions in the pay and conditions in the yard as compared to the MOD had to be brought about to bring the cost of labour in line with competing yards. Fifteen years have gone by since that study was commissioned and in that period a number of factors have affected the market which, if anything, have militated against its liability. There has been a position within shiprepairing of greater competition, of yard closures in the Mediterranean and elsewhere and of hidden subsidies in many countries in the European Union and we still have a situation where at the moment there appears to be over capacity in the industry.

Initially, the yard was promised RFA work which never materialised. It had a cash subsidy from the ODA which was used up partly in the purchase of equipment and partly in covering losses. In 1988 the Appledore contract was terminated and the yard was run by local people. One of the things that was obvious in that transition was the difficulty of obtaining work as an isolated union not part of a greater group. It was quite obvious by then that the basis upon which Appledore initially had persuaded the Government of the day of

their proposals were not attainable. They had promised a yard that would do £30 million of work and employ 2,000 people. We finished with a yard that was doing £8 million of work and employing 500 and even that was not a sustainable position. When GSL closed down in 1991 prior to the entry of Kvaerner it still had about 400 people directly or indirectly earning their living off ship-repairing, and the initial preferred option of Kvaerner, which was not acceptable, was in fact to have a miniscule hard core of permanent workers and a support of sub-contractors that would only be paid when there was work. One can understand that from the point of view of the company that maximises its profit potential, it only incurs labour costs when there is work available. Essentially, the proposals of the company produced in January were in a way seeking to achieve that same scenario. Up to January this year the company had been operating a contract with the Union and the workforce under which there was a bank for industrial workers of 150 hours a year which was not popular. People did not like it and in fact when that was brought in it was brought in on the basis that the company was saying that unless that was accepted they would go. At one stage when we were faced with the possibility of Kvaerner withdrawing, we offered them as an incentive to stay, EU assistance for training, which they have and the suspension of their £100,000 rental. That plus the acceptance by the work force of the bank of hours persuaded them to stay. The bank of hours was designed to work on the basis that when people worked extra hours they would get paid for the premium on the overtime rate and bank a maximum of up to 150 hours a year which they would then be required to take as time in lieu. I must say that it is quite extraordinary to have a situation where having a position in which there is a bank of 150 hours, which is not popular with the employees, the alternative that should be offered should be in fact a bank of 1,900 hours. That is what was proposed and the agreement which finalised on the 31st January 1997, was not the subject of a negotiation because there were proposals to improve it, the employer put proposals to replace it and to replace it by something that was inferior to what was being removed. During the limited period in which negotiations took place, because Kvaerner took the step very early in that process to write to each individual basically saying this is not negotiable, it is either you accept what we want, because we consider that the yard needs these conditions to survive, or we will go. I have no doubt that those industrial workers that accepted that, accepted that not because they particularly liked what they were being offered but because they thought they had no choice. In the timescale that they had to respond, which was a matter of weeks, the original conditions had been ameliorated, not

sufficiently, to get the support of those who had rejected the original proposals. The process of negotiation succeeded in reducing for example a requirement by the company that people should work 14 days on a stretch to not being required to work more than six days as is laid down in the Community Directive on working hours. It introduced the requirement that the average number of working hours could not exceed 48 over a four-month period which was not there initially. In the initial proposal there was a requirement that when there was no work available and people were at home they should be contactable at virtually any time and if they were not contactable that in itself was treated as absenteeism and subject to disciplinary proceedings and possible dismissal. A set of conditions, the like of which I have never experienced in any other field of employment in Gibraltar, and I have to say that if we look at those original proposals I have great difficulty in believing that the rest of Europe operates like that. It may well be that the company started off by going over the top in the expectation that they would then finish up with what they wanted. But all those conditions had to be seen in the context of how the people in the yard that have been subjected to innumerable changes since 1984 have seen as far as they are concerned a scenario where each time they are asked to accept greater changes, a situation which seems to be peculiar only to them in the whole of the economy, nobody else has gone through that experience in Gibraltar and each time hoping that what they reluctantly accept would be the end of the road only to find that it is not the end of the road.

Certainly the output of the yard with the manual workforce that it has of just under 100 is the highest that it has ever had in terms of output per man hours. Last year was the most successful year the yard has had since it re-opened in 1992 so there is no indication of a worsening commercial situation for the company. On the contrary, we believe that shiprepairing is an essential element in Gibraltar's economic development because quite apart from the number of people it employs and of course it is a fraction of what used to be the case previously, it is of course an industry that earns export earnings for Gibraltar. It is not unlike other sectors of the economy dependent on the goodwill of our neighbour and it is not dependent on the purchasing power from within the economy, it brings in money from outside. It is difficult to see how else the assets that were transferred to the Government by the MOD in 1984 how else those assets could be used to produce more than what they can produce by repairing ships. Part of the transition to the Kvaerner facility was accompanied by a reduction of the land area and the creation of the industrial park to retain what was enough to keep ship-repairing as an

activity. There is little more of the land space available that can be used for other activities once the industrial park was introduced. Keeping shiprepairing in Gibraltar cannot be on any other basis than being able to obtain work in the market at the price the market dictates. Certainly the difficulties that have been experienced in obtaining work in the last 18 months has not been because of lack of commitment on the part of the employees or because they failed to do work of the quality required by the customer or because they failed to deliver ships on time, it has not been for any of those reasons, it has been because to obtain work that did not lose money it was difficult to get work. The hourly rate dropped to as low as £10 an hour in the market having been as high as £20. One of the things that we had in the initial Appledore contract was that because the managers of the yard were paid on a commission basis based on the number of ships they did, it did not really matter at what price they were buying work and it did not really matter to what extent they were losing money. I remember one particular example of one particular vessel on which alone £500,000 was lost but the managers still god paid for doing a job that cost the yard £500,000. In the case of Kvaerner since the nature of the agreement is that they have to make the work profitable they have had a situation where they have not accepted work because they could not get the work at a sufficiently attractive price. Of course, that means that in the context of an agreement some elements of which appeared inoperable and some elements of which just did not make any kind of sense at all which again were changed, there was a particular clause for example in which employees would get £218 a week if they were sick before they had done the 1,900 hours and £258 a week if they were sick after doing the 1,900 hours. It is quite obvious that you cannot do 1,900 hours in the first few months of the year because there are not enough hours in the day, so effectively, if you were unlucky enough to go ill in January you got paid one rate but if you were lucky enough to go ill in December you got paid a different rate. That was corrected and that was replaced by a clause in which people get paid the higher rate on completing the 1,900 hours whether before or after the period of sickness. Those improvements were improvements to peripheral elements in the basic condition and the basic condition was that although it was presented as people being paid when there was no work without having to go to work, they were not really being paid at all. They were being advanced their wages but they were in debt to the company for the hours that those wages represented and could be required to do those hours subsequently unpaid. If that were the only way to keep shiprepairing in Gibraltar then in my judgement we would not be able to keep it. I do not think that is a

sustainable permanent system of working and I believe that if it is introduced, then it creates a precedent as to how work is organised which will be difficult to resist in other areas. Of course, the extent to which those conditions are draconian or not in practice will depend on the pattern of work.

The motion calls on the two sides to seek during the consultation period to avoid the intended redundancies. That is a requirement, the purpose of the consultation period laid down in the law is to explore ways of mitigating the effects or avoiding them and therefore we believe that the company having complied with the requirements of the law in the notification they sent to the Union on the 11th has to seek now ways which will meet what it wants and still be acceptable to people. One particular route which was proposed by the Government was that the workers should accept for a trial period of one year the system that the company wanted to introduce. I think the company moved to the extent that they were prepared to see it happening for one year whereas before they were adamant that it had to be three years. Certainly that is one option which ought still to be there during the consultation period. If it is not possible to move forward on that option, then there are alternatives which are not too difficult to devise and which can be packaged and financed in a way where at the end the cost of the lean period is not entirely borne by the company. That is the only argument that there is if there is commercial logic in the position of the company in saying that they need to have that level of flexibility. That presumes that Kvaerner is still sufficiently interested in being in Gibraltar and of course there is a difference between being willing to stay and wanting to stay. The position of a company the size of Kvaerner with 55,000 employees is one which having a subsidiary in Gibraltar that employs 138 is only of interest if it does not become too problematical. That is a feature of multi-national operations with which we have had no previous experience in Gibraltar. They tend to look at it not in the light of what is acceptable practice in Gibraltar but what is acceptable practice in the Group and therefore we are looking at a situation from two different worlds. We are convinced that shiprepairing can continue even with conditions that are not the ones that Kvaerner considers or claims to be essential. The fact that there has been perhaps 50 per cent of the changes proposed incorporated shows that the original conditions were not so important that nothing could be changed, but that is the first thing that needs to be established. We ourselves suggested that the way forward would be to keep on working with the 1996 contract and the company said they were not prepared to do that. We suggested a three-month period which

coincides with the 90-day advance notice of redundancies. The workforce, that had rejected those conditions even though initially they had been hoping to do away with the 150 hour bank, were prepared to keep the 150 hour bank for another year. If we find in fact that Kvaerner does not want to stay either because it has decided to go and is not willing to change its mind or because really at the end of the day this facility is such a minute part of its entire empire that it cannot be bothered with it, then the period between now and the 12th April should be devoted to seeing who we can bring in their place so that in fact shiprepairing does not end on the 12th April but continues beyond that date. I believe it is possible to bring in an alternate operator of the yard and in my view a purely domestic government-owned and government-run yard will have great difficulty in obtaining a regular flow of work so that we need an outside partner. But with the different ways in which we have attempted to run that yard in the past, with the use of companies linked to the yard which did not have their workforce 52 weeks a year on shiprepairing we believe that it is possible to come up with a formula that can be more acceptable than the version of the revised agreement that was rejected by the workforce the last time they voted them in or with the proposal they had previously rejected which would be moving to the terms the company wants and then seeing how they can be changed subsequently. Clearly, finding that out is the first thing that needs to be done. Supporting an alternative to that, which is a more difficult task but not an impossible one, is something that needs to be explored without delay and I imagine that the Government is already doing that and we are certainly aware that there are possibilities in that direction.

Let me say that when I gave notice of the motion for this House, it was on the basis of reflecting our assessment of what it was possible to do to keep shiprepairing in Gibraltar on the principle that there was nobody that did not want shiprepairing to continue. The decision that the Government took to publish the contents of telephone conversations which they think substantiate the judgement that they have made that the GSLP does not want shiprepairing to continue in Gibraltar because of the problems that that would create for the Government of Gibraltar, well, it would not create problems for the Government of Gibraltar, it would create problems for all of us and there is absolutely no logic in that position. That does not mean that we do not have to contend with a situation that has developed in the political life of the community where from adversarial politics we have moved to bitter politics and from bitter politics we are heading for tribal warfare. If that is how we are going to finish up, and we never run away from fights, then the

job that we all have to do, whatever differences we may have, to make sure that there is something to argue over at the end of the day will be made all that more difficult. It is quite obvious to me that we have a situation today in Gibraltar where the Government seems to think that every time it faces a problem it is being engineered by somebody who is a staunch supporter of the GSLP. There are innumerable instances of people who are staunch supporters of the GSLP who feel that they are being fingered and got at precisely because they are supporters of the GSLP and that is on the increase and it can only lead to one end, an end that is not good for anybody. I do not know what we can do to unwind that position and I do not know whether the political will exists to do it but I know that there are many people who support the GSLP and many people who support the GSD who are increasingly at each others throat. We could spend a long time in this House finding faults with the way things are done by one side or the other. Certainly, we have a situation where some people demonstrate with placards and make accusations against Kvaerner and Kvaerner's lawyers send a threatening letter to the Union saying that this is incitement to violence and producing a long list of alleged criminal offences. The fact that those recipients and some of the people that accepted the proposals of the company then do a counter-demonstration and produce placards and insult other people, which of course will not produce any letters from any lawyers from the GSLP seeking to prevent them from doing that, is quite extraordinary. It seems that in Gibraltar it is a crime to shout at a Norwegian but it is perfectly permissible to shout at a fellow Gibraltarian. Going down that route of either litigation or accusations or abuse is not going to produce a shiprepairing facility that will be able to give income to our economy. It is, if anything, going to make it more difficult for that to happen and there is certainly no excuse for the people that hold those views and express them strongly, and perhaps the fact that they express them in private and not in public, is an indication that really in public they know that those views are not sustainable or defensible. But we have had constant incidents, the worse of which has been the situation that has developed following the decision of Kvaerner to withdraw from Gibraltar. We have had an incident at the airport where because somebody's name is published in the newspaper and because he is being held responsible for Kvaerner's decision to pull out of Gibraltar, and it is not the first time, they tried to do it when we were there, he gets told when he steps off the aeroplane, "You had better not get sick because if you fall in my hands, as a nurse in the hospital, you are not going to make it". What are we going to do now? Have GSLP wards and GSD wards? It seems to me that there is a dangerous facet to

the divisions between us which is getting beyond control and which is going to get worse before it gets better. We are very clear that the conditions that Kvaerner produced are conditions that should not have been accepted. If the people had decided by a majority to accept them then that would have been their choice. We have no doubt that those that accepted it, accepted it only for the reason that they were sent letters at home telling them, "Either you accept this or you have not got a job." If we think that that is the proper way in which to conduct the employer/employee relationship, then it is not just proper for a Norwegian, it is proper for everybody and that will bring a lot of problems in its trail. The company started off from the position which anybody that has spent time in the trade union movement would have found anathema, and the Union has with great difficulty having on the one hand people whose view was expressed in meetings, whether they really meant it or not, that if that was the option then let them close, to seeking to improve what was available. I can tell the House that the advice I gave to the shop stewards that came to see me on the improvements they should seek to obtain, some of which were accepted and some of which were rejected, were on the basis that although they did not like the basic system, they thought maybe if the basic system could be improved at least in some of its worse aspects, then there might be enough people willing to support it but in fact it was consistently rejected. I think the rejection came because of the fundamental concept which is totally alien of sending people home and not paying them because all they are doing is lending them their wages. Whether this turns out in practice, because I am confident that a solution can be found, to be something that people can live with is not something that is in the hands of the workforce or in the hands of Kvaerner. It is in the hands of the market because if one has a situation whether there is no work in three or four months then the only way that one can pay the company back is by working the three or four months which one has not worked during the remaining eight months minus annual leave and minus public holidays and in that remaining period one has to put in a lot of hours to catch up with what one has not done before. One of the improvements that was done was the fact that the hours cannot exceed an average of 48 over a four months period. But of course that can mean nothing one month and an awful lot in the next month and then nothing another month. Another of the improvements was to limit the working days to a maximum of 11 hours and to require breaks to take place. Whether the agreement with those changes proves to be something that does not generate industrial unrest depends essentially on whether the work is available in reasonably regular streams. The agreement that Kvaerner offered in fact could only be

seen as a good agreement on the premise that there was no work although in the initial proposal it was not spelt out, in the final draft the company agreed to include a clause which said that if there was no work they would still get paid the 1,900 hours. The company was not willing to give a guarantee of no closure if it was accepted. There was a guarantee that they would close if it was not accepted but they would not give a guarantee that for the length of the agreement the company would commit itself to protect those jobs and they have said publicly that these conditions exist in Scotland. Well, in Scotland at the moment, if it is true that these conditions exist, they are facing possible 500 redundancies out of a workforce of 1,400. It seems to me that if one side is being asked to commit themselves to an agreement they are perfectly entitled to expect the other side to honour the continuity of employment at least for the life of the agreement. If one were to sign an agreement for a year now, one would expect that there would be a guarantee of no redundancy within that year. The narrowing of the gap between the two sides, which produced something that at the end of the day the shop stewards and the Union recommended to its members, took place over a period of three or four days. I am confident that if the period had been longer that would have been easier but in fact since the negotiations had not been opened by the Union asking for more things but opened by the employer asking to change things, there was really nothing that the Union could do other than respond to the initiative that was the employer's initiative. Today the position, as we understand it, is that the legal requirement for the consultation period has been opened but we are not aware whether there has been any consultation or whether there has been any indication from Kvaerner that in fact the decision can be rescinded between now and the 12th April if a satisfactory alternative can be put together. Therefore it is important to know whether that possibility continues to be there which in our view is implicit in the legal requirement to hold the consultation period. If nothing that is discussed and nothing that is proposed and no formula that is devised is going to make any difference to the consultation period, then the consultation period is totally meaningless. The fact that they did not actually take the step of announcing the redundancies until the 11th and that now that they have announced it they have said the redundancies take place on the 12th April must be assumed, unless there is information to the contrary, to leave that door potentially open, and if the door is potentially open then I think it is important that it should not be closed again. We are brining the motion to the House on the basis of offering whatever we can contribute to making the finding of a solution that has necessarily to meet a departure from the position

where there is only one way to do it and that is the way the company has devised. We believe that it is possible to produce a quantified commercial package which produces the kind of flexibility that they are looking for without the cost of that flexibility having to be borne by the company and therefore if the Government is able to ascertain from Kvaerner that they are still open to seeking a way of avoiding those redundancies then there is no reason why we should think that the facility has to close on the 12th April.

I commend the motion to the House.

HON CHIEF MINISTER:

Mr Speaker, I have to confess that I can barely believe what my ears have just been subjected to. The Leader of the Opposition has said, amongst many other things, that people are having their fingers pointed to by the Government because they are supporters of the GSLP, presumably meaning to imply that they are therefore being victimised. Mr Speaker, this Government does not, has not and will not victimise anybody and I would urge the Leader of the Opposition not to confuse my Government of now with his Government of the last eight years.

[Interruption from Public Gallery]

MR SPEAKER:

Let me make it quite clear, people in the Public Gallery are not allowed to applaud or otherwise. They are merely here to listen. Members of the House can.

HON CHIEF MINISTER:

The Leader of the Opposition would have us believe that there are nurses in this community who for political reasons would withhold medical treatment from patients. I have never heard such irresponsible garbage in all my days but if anybody has politicised the hospital historically in Gibraltar everybody knows who it is and they do not sit nor are they related to anybody on this side of the House. I am astonished, astonished, to hear the Leader of the Opposition say, "For goodness sake let us leave something to fight over." Well, it is not a member of my Executive, it is not my campaign manager that has described the closure of the yard as a blessing if it were to occur. Of course I do not want to throw out the baby with the bath water, I just wish that everybody else agreed with me when I said that. He says that if we go down the road of abuse there is no way forward and sit here patiently asking myself where the Leader of the Opposition has been for the last two weeks.

If the road of abuse is not the way forward why did he not say that to his Executive Member, Mr Robba, when he said to him, "Y donde le estoy dando el calenton es para que el viernes, el viernes, si manana, con el Chairman, este que viene esta noche no se arregla nada, el viernes que marchen todo para abajo que se vayan al ETB, se pongan en el ETB y se carguen en los muertos de Netto."(1) Is not that the strategy of abuse? Why did he not then say to Mr Robba that the road of abuse was not the way forward and if that omission was an oversight on his part, why did he not take the second opportunity to tell Mr Robba that the road of abuse was not the way forward when Mr Robba said that what he intended to do, indeed what he had told the men to do..... "ustedes el viernes marchais por toda la bateria, se vay alli, cerrais todo, parar todos los coches, y le formais el escandalo grande alli a Netto."(2) Is not that the road of abuse? I am glad that now at least the hon Member is converted to the view that the road of abuse is not good for Gibraltar. I simply wish that his conversation had been three weeks' earlier because if it had, Kvaerner might still be in Gibraltar today.

This Government will simply not tolerate, not tolerate, a return to the abuse and the manipulation of industrial relations in Gibraltar for the personal political ambitions of politicians in this community in a way which can only bring Gibraltar to its economic and therefore to its political knees, in a way in which Gibraltar has known in the past. We will not tolerate a Gibraltar in which industrial relations are regarded as a weapon to be used on the road to No 6 Convent Place. The issues that we are discussing today, the issue of Kvaerner and everything that has happened in Gibraltar in the last week or two, raise many issues and of course amongst the issues that it raises, of course amongst the issues that it raises, is the ethical question of whether it is right or wrong for Government to publish tapes of secretly recorded telephone conversations. If anybody thinks that the Government are comfortable putting such information in the public domain, they are mistaken. If the Government were not willing to make a decision and then take the consequences in defence of the public interest of Gibraltar as the Government sees it, it would have been very easy for the Government to pass the tapes on to a newspaper or to pass the tapes on to a television station and say, "No, no, you leak it, you put it in the public domain so that nobody will criticise my lilywhite hands." The Government consciously took the decision that because the only justification for putting these tapes in the public domain were the defence of the vital interest of Gibraltar if anybody was going to do it, it would be the Government and nobody else. I have no doubt, and if ever I am faced with the same decision

again it will be the same decision that if we are faced with a balance of the ethical moral questions of the use of recorded conversations and the Government sitting on information which would allow people to bring Gibraltar to its economic knees, know ye everybody in this House that as far as this Government are concerned the decision is barely a contest. I know of no public interest which has priority to the survival of this community, economically and politically and if I have to dirty my hands with questions of putting into the public domain secretly-recorded telephone conversations in order to save Gibraltar from economic and political catastrophe, I will live with dirty hands for the next four, eight or twelve years, how long as it takes.

Mr Speaker, it is certainly not fair on the families in Kvaerner, on the workers and their families in the other areas of Gibraltar's economy where presumably this tactic would have been deployed time and time and time again during the next four years. We already know that it was in people's minds to do it to the nurses and with Gibtel, that much we know, what we do not know is where else they are doing it or will do it or have done it since May 16th because goodness only knows there has been a sudden resurgence of industrial unrest in Gibraltar since May. I can only describe the conduct of Mr Charles Robba as irresponsible in the extreme. Not irresponsible because it might have eventually have succeeded in bringing down my Government, the political longevity of my Government is a relatively insignificant matter. If Gibraltar does not have this Government it will have another Government. There is no shortage of governments for Gibraltar but we do not get too many chances to make a success of our economy and it is not the political longevity of the GSD Government that Mr Robba should worry about but the political and economic longevity of the entire community of Gibraltar. I was dumbfounded to hear the explanations proffered yesterday on television by the Leader of the Opposition for Mr Robba's conduct, an exaggeration, he did not mean it, he would not have done it, will we ever know? The Leader of the Opposition said much yesterday on television about the behaviour of Mr Robba but he was extraordinarily silent about his own. Some have commented that the Leader of the Opposition's failures in this matter are by omission rather than by commission. Well there are certainly sins of omission in that he failed repeatedly throughout those conversations to say to Mr Robba, "Don't be an exaggerating fool, don't you dare do to Mr Netto what you are describing, don't you dare think that it would be a blessing." Not one word to discourage Mr Robba and I fear that Mr Robba was entitled to interpret the Leader of the Opposition's silence in the face of the behaviour that he was planning, to be positive encouragement to it. The Leader

of the Opposition's conduct has not been, contrary to what some have said, simple sins of omission. In response to Mr Robba stating that he had created difficulty for Mr Montiel, the Leader of the Opposition did not say, "Why on earth are you doing that to a man who is trying his best to solve the dispute?". No, in response to Mr Robba stating that he had created difficulty for Mr Montiel the Leader of the Opposition's answer, "Good." In response to Mr Robba stating that he was going to create difficulty, the Leader of the Opposition answered, "Yep." Instead of explaining to Mr Robba the economic realities of a shipyard needing to survive in the international market which he appears to recognise now since he has given us a lecture about it this afternoon, no, what the Leader of the Opposition says is that since the yard is now earning money now is the time when the workers should get tough. Who says the yard is earning money? The yard is not earning money and how can urging the workers to get tough be a constructive contribution to the solution of any industrial relations problem. In response to Mr Robba stating that it was necessary to cause difficulty for the Government on the basis of, "An eye for an eye compadre", the Leader of the Opposition's reaction was "yep", not "nope", "yep". Therefore, I simply do not accept and the Government does not accept that the Leader of the Opposition's conduct has been only by omission as opposed to by commission.

Mr Speaker, I said before that the Government were not willing to tolerate a return to the politics of the early 1980s, where somehow or other the industrial relations situation in Gibraltar always seemed to benefit the Opposition. We have the statements by the Leader of the Opposition to Mr Robba saying you get the guys to get Mr Montiel, who is the District Officer, out of the way of the conduct of this dispute, which is the most serious industrial relations crisis that Gibraltar has had in nearly a decade. The Leader of the Opposition's advice to the workforce, through Mr Robba, was that they should machinate that the District Officer should be swept to one side so that the dispute can be conducted by the Branch Officer "..... y ustedes". "Ustedes" being Mr Robba and who else we do not know and this was in the Government's opinion a plain attempt by the Opposition and its satellites to gain control of the conduct of an industrial relations dispute so that they could manipulate it and milk it for their own political advantage. Of that the Government have absolutely no doubt.

Mr Speaker, the Leader of the Opposition had the temerity, in the knowledge that he had had these conversations with Mr Robba, to appear on GBC television and tell this community that he could categorically and

unambiguously deny that any GSLP activist was agitating at Kvaerner and that I was lying. It is not in my style to call anybody a liar but people will be able to judge for themselves about who was lying in this matter. I just do not see how the Leader of the Opposition could assert that no GSLP activist was agitating when he had had conversations with Mr Robba in which Mr Robba explained to him what he was proposing, what he had already done, about what he was urging the men to do to Mr Netto, about the blessing, about an eye for an eye, about causing problems to them as we had supposedly done to them.

I do not remember bringing any employer of 138 people to its knees simply as a way of doing down the political fortunes of the Leader of the Opposition when he was in my job. The Leader of the Opposition's motion speaks about how both sides should use their good offices and work together for the resolution of this dispute. The Government cannot, in the circumstances, as they have been proved to have occurred, cannot and does not accept, that the Opposition has used good offices in this matter and if these are the good offices of the Opposition, God help us when they are not using their good offices. I will therefore move an amendment to the Leader of the Opposition's motion.

Mr Speaker, the amendments that I seek to move are the following:

The motion of the Leader of the Opposition reads that, "This House is deeply concerned by the decision of Kvaerner to cease operating the Gibraltar shiprepair facility because it has been unable to obtain the agreement of the TGWU to new working conditions or industrial employees."

Mr Speaker, I seek to delete the initials TGWU and replace it with the words "a section of the workforce", so that it should read: "because it has been unable to obtain the agreement of a section of the workforce to working conditions for its industrial employees". The fact of the matter is that the Transport and General Workers' Union agreed but the advice of it was not accepted by a section of the workers. The Government have no amendments to the second paragraph of the Leader of the Opposition's motion which reads: "It considers that the continuation of shiprepairing is an essential element in Gibraltar's economic development and calls on both sides of the industry to spare no effort during the consultation period to avoid the intended redundancies."

The Government move to delete the third paragraph altogether, which reads:

"It further considers that both sides of this House should use their good offices and work towards ensuring that there continues to be a shiprepair facility at the Gibraltar Dockyard", and to replace that with the paragraph, which is the third paragraph in the reprinted version of the motion which you all now have before you: "It further considers that all interested parties should work towards ensuring that there continues to be a ship repair facility at the Gibraltar Dockyard."

The reason for that amendment is simply that the Government are not willing to support a motion that suggests that the Opposition had deployed good offices in this matter. Then I seek to add to the remainder of that motion, as so amended, the following paragraphs:

It notes that in the taped telephone conversations published by the Government:-

(1) In response to Mr Robba stating that he had created difficulty for Mr Montiel, the Leader of the Opposition, answered, "good";

(2) In response to Mr Robba stating that he was going to create difficulty, the Leader of the Opposition answered "yep";

(3) Mr Bossano says that since the yard is now earning money now is when the workers should get tough; and

(4) In response to Mr Robba stating that it was necessary to cause difficulty for the Government on the basis of "an eye for an eye", Mr Bossano answered "yep".

It condemns the actions of the leading GSLP activist and member of the GSLP executive in seeking to agitate the situation at Kvaerner in order to cause problems to the Government.

It notes that the Leader of the Opposition made no attempt to dissuade Mr Robba from this course of action and that his omission to do so could be construed as encouragement.

It notes that last week and notwithstanding that he had had these conversations with Mr Robba, Mr Bossano nevertheless "categorically and unambiguously" denied that the Government's assertion of agitation were true and said that they were a lie.

It considers that in these circumstances the bringing of this motion by the Leader of the Opposition is hypocritical and an attempt to portray the Opposition

party's role in this matter as constructive when the recordings show otherwise.

It notes and applauds the efforts made by the District Officer of the TGWU to resolve this matter in very difficult circumstances.

It notes and supports the Government's efforts to contribute to the saving of the yard by engaging both the workforce and the management in dialogue to seek formulas for agreement and by offering to contribute financial resources and political support to ensure viability."

Mr Speaker, the nature of this dispute is indeed complex. The company, the Government has no doubt, offered the workforce working conditions which contained a principle which was not negotiable. The company was willing to negotiate the details. The Government have little doubt that in so far as it concerns the basic principle of flexibility of hours in the discretion of the company, the Government believes, as the men have always believed, that that was a non-negotiable pre-condition and that to that extent the workers were negotiating with a pistol to their heads. The Government's view is, and we have said this publicly and in private to the workers themselves, that the Government have sympathy for the fears and concerns and indeed anger of the workers given that they feel, rightly, that over the last three or four years they have been making more and more concessions in terms of their working conditions to the supposed viability of the yard but that although the Government acknowledged and accepted their concerns and their fears and their anxieties about these conditions, the way forward was not to bring about the closure of the yard. It is a matter of regret to the Government that that advice was not taken. The Government believed and advised the workers that the way to proceed in the greater interests of Gibraltar was for the workers to accept a trial period for a year to see if their worst fears and anxieties about these conditions were real, and that if after a year, during which the Government would help them secure improvements in those conditions, if during the year they found, at the end of it, that their conditions, or to put it another way, that their fears had been realised and that their conditions really were everything that they had been afraid of, that we would then be in a position a year from now that we are today and that the workers would have given it a try. This we were recommending as advice because the Government were being told by both the Norwegian and the Gibraltar management at Kvaerner that these conditions were not unique to Gibraltar. That these were conditions which prevailed in some cases even more strictly in shiprepairing and shipbuilding yards in the United Kingdom, specifically in Scotland and in

Northern Ireland, but also in Appledore shiprepair yards in England. The Government had also been told that when these conditions were first introduced into these yards elsewhere, the workforce were equally reluctant but that after a passage of time, the workforce in those yards grew to accept the conditions as both necessary and not as draconian in their practice as they certainly look in print. In the hope that the Gibraltar workers' experience would be the same as the experience to workers elsewhere in the United Kingdom the Government pursued the line of recommending that course of action. The position of the company is, was and as I have known it, has always been that they were not willing to stay in Gibraltar. It was not a question of money, the Government offered subsidies, the Government offered financial assistance in various shapes and forms but it was not a question of money. The company felt that they could not in the modern shiprepairing industry, operate a shiprepairing facility in Gibraltar unless the workers understood what it was to be a shiprepair worker, in this day and age, even in Europe, and if not happy, resigned, to being such a worker. That is why the company, they tell me, were insisting on an acceptance of the principle. There is nothing that the Government can do to force Kvaerner to stay in Gibraltar. If the problem was money, then within reason of course the Government can put money on the table. There are other things that the Government could put on the table and indeed offered. The only thing that the Government could not deliver was the issue that was at the root of this problem which was not, contrary to what the Leader of the Opposition said on television and what he has repeated today, money but a battle over principles. The workers were taking the position that they could not stop being masters of their own lives, that they sell their time for 39 hours a week and that if they want to work overtime they can and if they do not want to work overtime they do not have to. In other words a basic working week with overtime discretionary on the part of the workers. The company was taking the precise opposite point of principle. The company was saying, "No, to be a shiprepair yard in Gibraltar I need a workforce that understands, that because ships come in on a Friday and have to go on a Monday at three o'clock in the morning, the workforce has got to be available to me when I need them." Therefore it is not overtime discretional on the part of the workforce it is overtime and even basic hours discretional in terms of when they are worked at the discretion of management. Much as the Government tried to find formulas to bring the parties together, in the end we could not because Government simply did not have anything to contribute to that conflict of principles between the position of the company and the position of the workers. The Government's position was not to say to

the workers, "Accept these conditions because we think they are fair." It was not, "Accept those conditions because we agree with them." It was "Please accept the conditions because whilst the yard is still open we can fight for better terms, better 138 jobs with conditions that none of us like and that we can all work together to improve, than no yard and 138 people without work." That was the Government's position in the face of the workers' understandable anxieties about the terms and conditions and irritation at the way that the issue was suddenly brought to such a head. The Government of course was also mindful of the rights of other works. It is not for me to say that people should be willing or should not be willing to work on a particular set of terms but if there are people in Gibraltar that are willing to work on terms that others find unacceptable the Government was saying, "Please get out yourselves and leave it to the people who are willing to work on those terms and do not close the yard for everybody." The Union, the labour force, on the advice I suppose of their Union, and on their own basis, took the view that that is not a principle that could be put into practice and that the right was to establish what they thought were acceptable working conditions for everybody and not just for themselves.

Mr Speaker, you will see that my amendment pays tribute to the District Officer of the Transport and General Workers' Union and I do that because I can speak to the enormous internal battle that the District Officer of the Transport and General Workers' Union has tried to struggle with between wanting to support what he thought was a legitimate aspiration of 64 of his members on the one hand with the equally strong desire to do what he thought was in broadest terms in the greatest economic and political interest of Gibraltar. It is not an easy tightrope to walk. The District Officer has attempted to walk it but he has failed but I think he should be recognised in his efforts.

Mr Speaker, the very latest position in relation to this matter is the following: Last night, as has already been put into the public domain, the shop stewards representing the 64 Kvaerner workers in question, of whom there are 10 or 12 shop stewards, asked to come to see me and we met at five-thirty or six o'clock in the afternoon. At that meeting it became possible, given what has happened, given assistance that the Government had been willing to provide, which apparently had not been properly explained to the workers, it became possible for the workers, the 64 workers in question, to accept the Government's proposal of last week or the week before, namely that they would go back to work for a year on Kvaerner's terms to try it out, that the Government would provide financial support, during that period, to

enable the company to pay an unsociable working conditions allowance and that to address another of the men's conditions, namely that they felt that if they went back on these circumstances the local management would feel strengthened and subject the men to intimidation or bullying or recriminations of any sort, that the Government would deploy permanently at Kvaerner an industrial relations officer to supervise and monitor the conduct of industrial relations at the yard.

At a meeting this morning that proposal was put to the 64 men with the recommendation of the shop stewards. After some discussion it was put to a vote and the workers voted to accept it. That was just before one o'clock today. Regrettably, I have communicated this situation to the management at Kvaerner and the position of Kvaerner's parent in Norway, is that it is too late, that their decision to close the yard has now been transmitted throughout the international shiprepairing market and that they are now unwilling to reconsider their decision to withdraw from Gibraltar. The Government will, of course, now deploy all resources at its disposal to find an alternative operator for the yard. Already there has been a number of companies and individuals that have shown interest, albeit not specific and very preliminary, in operating the yard. The Government will leave no stone unturned in replacing these jobs, all 138 of them for all of them as soon as is possible. The Government had a difficult employment task in Gibraltar before this fiasco. Now it has an even harder one. The Government accepts the challenge to solve this problem but people in this community will have to judge for themselves the extent to which GSLP activists have contributed to increasing the Government's difficulty. I commend my amendments to the House.

HON J GABAY:

Mr Speaker, I would like to go back to the dramatic speech that was given by the Chief Minister, in particular when he came to the point of referring to the recorded telephone conversations. I notice that in his dramatic performance it came up into a crescendo of passion, obviously to veil the nastiness of what has been done. I think that when the debate subsides on the interpretation of these calls, their content, one thing will remain as permanent shame on our community and that is the publication of private, confidential telephone calls. One always felt that this was the domain of the gutter press but for a Chief Minister to claim that some extremely noble citizen felt honour-bound to come to him for the salvation of the community and that he, with his overpowering love for Gibraltar felt it his duty to do this. The Chief Minister underestimates the common sense

of many people. It is an insult to the community and will affect the social fabric of this community and political life because it is an obvious ploy to gain political advantage. It is a party gimmick and no amount of claiming and monopoly over morality and ethics and being the answer to everybody, will ever stop the fact that you will be known as the juggler of inconsistencies on every field, wanting to be everything to everybody. I do not want to continue with this personal attack otherwise I might enjoy it as much as the Chief Minister enjoyed his performance but it makes me recall Lady Macbeth's injunction, "Look like the innocent flower and be the serpent under it."

HON P C MONTEGRIFFO:

Mr Speaker, I want to limit my brief comments to the employment aspects that arise as a result of this issue. The Chief Minister has already raised the difficult job environment in which we find ourselves and I find it without being in a position to make judgements as to where fault lies in different percentage terms in all the participants in this episode, I think it is extraordinary that Gibraltar, within this calamitous employment situation we are facing, has thrown away a source of employment, a source of revenue which is going to be extremely difficult to replace in the immediate term. It may be recalled in the context of the MOD rundown and in the context of the Deloitte and Touche Report that the figures there are significant. However they finally materialise but they are significant. One of the comments made by the consultants is that even if jobs are replaced from activity that was previously MOD, that those jobs will not create or at least are unlikely to create employment at the salary levels and on the terms which MOD workers have previously enjoyed. It is therefore a reality which this Kvaerner situation has again brought to the forefront that Gibraltar, when we talk about economic transition, Gibraltar is going through a transition in employment terms also and therefore it is wrong for the Leader of the Opposition, quite wrong of him to say that the workers in Kvaerner were the only ones being asked to make a change in their conditions. True, the changes were perhaps particularly acute in their case. True the change has been one which has come over a period of years but how many private sector firms out in the economy have had to adjust to the realities of ever more difficult conditions. How many people in the public sector as well are indeed coming under pressure now to provide value for money. This economy has to perform and that means that even though it is painful and the Government have expressed its high degree of sympathy with the conditions that were being demanded of workers at Kvaerner, this economy has to be

able to adjust at every level to the sort of commercial expectations which customers make of Gibraltar. The advice therefore given by the Leader of the Opposition is I think erroneous, quite apart from the political machination, quite apart from the whole question of the manipulation of which enough has already been said this afternoon, just on the advice given empirically that he would advise workers today not to accept those conditions, that is bad advice, bad for the workers, bad for Gibraltar. The workers themselves have indeed taken a different view today, a view which they say under protest because they would rather not work under those conditions but a view they have taken because when they have seen eventually that there is no other alternative, that they would rather have had a job than no job at all.

I think it is important therefore in looking at the jobs that we can create in this economy, in looking at the commercial activity we can attract, for people to have a real level of expectation as to what Gibraltar can produce. Gibraltar is fully in the competitive market in every area, be it the financial services, be it in tourism, be it in shiprepair and it is simply not enough to think that we can harp back to the conditions of before because that will not get us out of the deep predicament in which we find ourselves. Mr Bossano said in his contribution that the company, in return for the deal that the men were being asked, would give no guarantees about remaining open for that period of time. Well, there are no guarantees. There are no guarantees now in 1997 with regard to any commercial venture that is using Gibraltar. Therefore we have to make sure that those in public life, those in the political arena, those that are involved with the trade unions, those involved with the commercial entities, the Chamber of Commerce and others, act responsibly and in accordance with that basic tenet of commercial life. It is quite wrong to transmit a message to our community that there are guarantees, that terms can be negotiated over and above the terms that exist in Belfast, in the Scottish yards or elsewhere in the tourism industry in what would be our natural competitive area. So my contribution today apart from lamenting what has happened and adding support to what the Chief Minister has said is to simply make clear that from where I sit, from the point of view of trying to create economic activity and generate jobs, that we have to come to terms with a completely new scenario. A scenario that requires flexibility, requires us to accept terms that we would rather not have to live with but which Gibraltar is going to have to adapt to if we are going to survive economically and that it is irresponsible for that process of transition to become the subject of the political machination which, frankly, over the last week we have seen it capable of becoming.

I think workers deserve better, their families deserve better and Gibraltar will not survive that manipulation. Gibraltar commercially is dead in the water if we transmit an image of a community not prepared to be flexible in the way that we adjust to economic realities and not prepared, frankly, to put politics to one side when it has to be put and to work responsibly for the better of our community. I think this week has been a sad week in the way that the Opposition, elements within the Opposition, have behaved. I think the message it sends internationally will be damaging but I remain hopeful that with the efforts of the trade unions, that have behaved on-side with common sense, that we will be able to create activity, an activity which will require the workers understanding that we want to help them to get the best conditions possible but that those conditions are dictated not by our desires but by the demands of the market and by the need to remain viable in all conditions as they develop. Thank you.

HON A ISOLA:

Mr Speaker, it has indeed been a traumatic and sad week for Gibraltar not just for the loss of the 138 jobs, which we certainly will support the Government in any moves they make to recover those jobs, either with Kvaerner, another operator or maybe even in a potential diversification of the yard. Those are all options that the Government have at its disposal and we would certainly support. The role in the Assembly of the Government and the Opposition is one that I think people will be asking themselves. What is the role of Government? What is the role of Opposition? In my view it is simply to give leadership and to offer the community, a very, very small community, every possible chance of success. That has been in my view and the last speaker the hon Minister for Trade and Industry mentioned the words "the message", well, what message are we sending out to people when in the words of the Chief Minister secretly recorded telephone conversations are published. What does that do to the confidence of the people that work in Gibraltar in the financial services sector? In every other sector in Gibraltar? What is the confidence? They spoke before the elections on how Big Brother is watching you. Well, now he is not just watching you, he is listening to you. The Chief Minister himself said, "The ethical and moral problem that he saw himself with and it was no contest." Well, I am sorry, I cannot agree, I think it is no context the other way because if the Chief Minister was genuine in his concern for what was happening he could have called the Opposition and said, "Look, I have these tapes, this is the evidence I have, is it true?" But the clinical method in which those tapes have been used for political

profit is not something that we can accede to, it is forgetting the problem of the people who are standing outside without jobs. They are the problem, not to spend time, effort and, in my view, causing potentially huge problems to us by releasing these private and confidential tapes. The problem is the 138 people who are out there without jobs. They have mortgages, they have families and they have their own lives to look forward to and that is where the effort should be put into. The motion which the Leader of the Opposition put forward is dated the 6th February, there is no change of heart, that was put before the tapes were published. The 6th February, before the tapes were published the Leader of the Opposition put forward a motion calling for all parties to work together, for both sides of the House to work together, to resolve the problem for the people that are suffering, those are the people that are outside. The response to that motion has been the publication of tapes, which has been cold and calculated, for political profit and nothing else. Unfortunately, that is the reality. The Chief Minister will say, "I felt it was in the public interest". I ask the question, in whose real interest was it? The people which is the public or the GSD? That is the question I ask and I ask each Government Member to examine that in their own minds and see what response they come up with. The statements of Mr Robba of course were wrong. They are indefensible and unjustifiable, of course they are wrong and he has accepted that they were wrong. He has resigned from the Executive and he himself has sought to explain as far as is possible why it occurred. Those and some of you who have worked in the past with the union, those of you that know him, know the kind of character he is. I certainly do. The man has not an inch of malice. He may be a fool. [Laughter] Some people obviously find it amusing, Mr Speaker. The statements by Mr Robba are indefensible, they are unjustifiable and I would not even try or pretend to seek to defend him, they were wrong, but I think what has to be put into perspective is that what Mr Robba said on those tapes, and the Chief Minister has referred to it repeatedly today, and what happened, are two different things. The Government came out saying that it was caused by activists. Well, I do not know how many signatures there were, I think there were about 70 signatures on a piece of paper saying that they had not been manipulated, and what you have to do is to put yourself in the position of the man that is about to lose his job. How bad must that job be for him to consider sacrificing his job, possibly losing his house, not having money to pay his mortgage, how bad must that job have to be for him to have to do that? Clearly it is very bad, it is no consolation to him for you to say, "It is the same as in Scotland". Well, fine, it may be but I

ask you would you do those jobs on those conditions? I certainly would not, Mr Speaker.

HON P MONTEGRIFFO:

If the hon Member will give way, I certainly would, if it was between putting food on my children's plate or not having a job, I would have no hesitation. That does not mean that I find them attractive or appealing but I certainly know where my responsibilities lie there and that I think explains the final decision, albeit the decision taken now at over the eleventh hour to accept those terms, not willingly, under protest, but out of a sense of resignation as to the realities as they currently now are.

HON A ISOLA:

Yes, Mr Speaker, of course, there are other realities but that does not detract from the fact that you are asking a man to be on call 24 hours a day. As one of the men said in a television interview, "This is a catastrophe for the whole of Gibraltar, so why does not the whole of Gibraltar help us with what we have to do?" I think in part that is to give credit to what the Government is doing, it is seeking to shoulder some of the responsibility, financially and politically and I think that is absolutely right. But ask yourself that question, how bad must the job be for a man to have to consider giving it up with no prospect of a job in that industry unless another operator comes along stream. I ask the question, Mr Speaker, do the ends justify the means? In my view the publication of the tapes do not, because the knock to our democracy, the knock to our confidence to have people listening in to your telephone conversations and not just listening but recording them as well and maybe worse than that publishing them, and what the Government has done in one blow it has said to the people, "Yes, you can go out and listen to other people's conversations, yes, you can go and record other people's conversations and yes, if you want to sell them, sell them". The political profit may be different but the profit is still there and in my view what the Government has done is to send a signal out saying, "Yes, you can do it." That is what I think is the saddest of all events that have happened in these past three days. On the amendment to the motion the Opposition will certainly be supporting the first three paragraphs of the motion and the last two paragraphs of the motion. Thank you, Mr Speaker.

HON CHIEF MINISTER:

Mr Speaker, I reject outright the views expressed by the Hon Mr Gabay when he says, "That nothing justifies the publication of these tapes". "That when all this is over", a long hard wish for him, "all that people will remember was that the Government has published the tapes". Well, I do not accept that there is a right to privately conspire to bring about the economic downfall of Gibraltar, and if there is a right to privacy which certainly the law does not respect, if there is a right to privacy of telephone conversations, it certainly does not supersede the vital interest of this community, the fifth columnists, people willing to bring the economy to its knees for their own selfish political ends, should be allowed to quietly beaver away rather than expose them through the cardinal sin of recorded telephone conversations. I am happy to disagree with the hon Opposition Member on that point, and I am unhappy that he should ever find himself in Government because the natural consequence of what he has said is, that Mr Robba's right not to have his conversations eavesdropped, not by the Government, that Mr Robba's right to have his telephone conversations eavesdropped are so sacrosanct to him that when he is in Government he will sit idly by and watch.....

HON J GABAY:

On a point of order. The point of order is, that I did not justify the contents of the telephone conversations, but this remarkable Chief Minister of ours builds this tremendous superstructure of catastrophe which is really riddled with lies.

MR SPEAKER:

That is no longer a point of order. It was at the beginning.

HON CHIEF MINISTER:

Mr Speaker, it follows that Mr Gabay's view is, that having received the information, the Government should have sat on it and let Mr Robba and his accomplices beaver away for the next four years, putting obstacle after obstacle after obstacle in the path of the Government's realisation of its economic policy. It is very comfortable for Mr Gabay to recommend that course of action hoping in three and half years' time to be the political beneficiary of the sabotage. A reference has been made to the clinical method in which the tapes have been used. Yes, the Government have carefully considered

the publication or non-publication of these tapes and we believe that the clinical method in which these tapes have been used have saved Gibraltar during the next three and a half years because we have no doubt, as many people in Gibraltar even before have no doubt, now even fewer have doubts, that we would have been faced with dispute after dispute or if you prefer the words of Mr Robba, "follon, tras follon, tras follon, day in, day out".(3) I have never prided myself on my surgery but to the extent that this surgery has been clinical it has been effective and to the extent that it has been effective it has saved Gibraltar and I consider to have done Gibraltar a public service.

The motion may have been put down before the publication of the tapes but it was put down after I had come out making the allegation of political manipulation and that I had evidence and perhaps it was put out because the conversation suddenly flurried to the mind. Finally the hon Mr Isola hopefully reminds me of the difference between what was said and what was happening as if to suggest that there has been no agitation because none of what Mr Robba said actually happened. Well, he is mistaken. Most of what Mr Robba said happened. Mr Robba says on the tapes that he was going to dispatch the men to abuse the Minister for Employment and indeed they did. Mr Robba says in the tapes, "Because tomorrow I do not want there to be any agreement, me comprende? yo no quiero que manana haya ningun acuerdo, me comprende? entiende?"(4) The sad reality of it is that there has been no agreement and the yard has closed so that there is a crushingly damaging coincidence between what Mr Robba says on the tapes he would do and what has happened in fact. Events which justify, in the Government's opinion, its decision to publish the tapes.

Question proposed.

HON J J BOSSANO:

Mr Speaker, my colleague Mr Isola said we were in favour of the first three paragraphs and the last two but if it is not put separately then we cannot do anything other than vote against.

MR SPEAKER:

He did not put it as an amendment to an amendment, he said how he was going to vote.

HON J J BOSSANO:

No, no, we are not seeking to amend. What we are saying is we are in favour of part of it and not the whole of

it. Unless we have a separate vote on different parts then we have to vote against the whole.

MR SPEAKER:

No, you cannot at this stage.

Question put. The House divided.

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

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

Absent: The Hon Miss M I Montegriffo

The amendment was carried.

MR SPEAKER:

Now we go back to the motion. Before I call on Mr Bossano to answer, any contribution on the motion as a whole as amended, from one side or the other?

HON J J BOSSANO:

Mr Speaker, I think the news that Kvaerner says it is too late is of course extremely bad news but it is an indication of the way the company has approached the changes in conditions from day one. I have to say that I do not agree with Mr Montegriffo when he says that, "We are required because of the changes in our economy now to do what we have not been required to do since the yard closed in 1984". In fact there may have been adaptation of businesses in the private sector to a changing market situation but there has certainly not been an adaptation of conditions of work in the private sector which have been on the basis of each change replacing something for the worse. That has not happened in the private sector so that is what makes Kvaerner different.

HON P C MONTEGRIFFO:

If the hon Member will give way, I do not agree. I think there has been a fundamental change in the private sector, not perhaps in many of the formal terms of conditions but whilst a job in Barclays Bank 15 years ago was a job for life, a job in Barclays Bank today like a job in Banque Indosuez or a job in ABN is not a job for life. Therefore there has been a fundamental shift in the way people perceive job security, in the way people perceive the need to have to earn their way every single day and I think, whilst I accept that the position in Kvaerner is more acute and we have sympathised with the workforce, frankly it is a form of adjustment which this economy has been undergoing over the last decade and a half and which is probably going to go some good way further before we become sufficiently adaptable to really compete in the open market. That is what I meant.

HON J J BOSSANO:

I agree that the changes in the market have created a greater degree of job insecurity now than there has ever been before and that that is not peculiar to Gibraltar, and that that was certainly happening periodically in the last few years and looks like being a permanent feature for the private sector economy here and everywhere else. But we cannot in the same breath say that we understand and sympathise with the rejection of people who have a pistol put to their head and then seem to be saying we are all going to have to live for the rest of our lives with the pistol pointed to our heads. In fact I do not think that that degree of change that is required necessarily has to go as far as having pistols put to our heads. I do not accept that in the private sector, in any business, any company in Gibraltar would have said to the Government, "It is not a question of money." Of course it is a question of money, but apparently Kvaerner says it is not a question of money, it is a question of almost who runs the show. And who runs the show, there was a letter in the Chronicle from somebody, because in fact within the regrettable division that took place amongst the workforce and I think it is bad for them that they divided, that some as it were, capitulated because the pistol was at their heads. There were both people who are in the GSD and people who are in the GSLP, in both groups, in those who accepted and those who rejected and people who are in nowhere. But it is a question of where people are prepared to make a stand and I think they were right to make the stand in saying no and I think that it was possible and should have been possible to achieve an agreement. What Kvaerner said yes to, two or three days ago, they are saying no to today. Well, it seems to me that if we took the view that workers had

said yes to Kvaerner three days ago and now turned it down, people would be saying to them that they are an irresponsible lot and yet this is the company that is required by law to hold a period of consultation to avoid the redundancies. Having now been faced at the beginning of the consultation period with acceptance of what was not acceptable two or three days ago to the employees but acceptable to the company, now the company says it will not accept it. I can only assume from that, that the company has come to the conclusion that what it wants to be able to do with the workforce is not going to be deliverable, but they may not be able actually even if people accept it under duress to get the commitment that they are looking for. That is in fact one of the crucial elements about putting pistols to people's heads. You may get them to say what you want when you have got the pistol but when you take the pistol away you get a different answer.

I believe that it is not true that the only way the yard can be run is from the proposals that Kvaerner is putting. Therefore it is important now that we prove them wrong, that the yard does not close on the 12th that we find an alternative operator for it, that we do a package which now need not be the exact replica of what was there because now we do not have pistols and that therefore we will finish up with a workforce which will be more committed to the operation because they will not have been dragooned into a system they did not want to operate. Part of Kvaerner's reaction must be a recognition that it has been said that their experience in Govan and in Northern Ireland, I was not aware that they had a yard in Northern Ireland, is that where these conditions have been introduced people have resisted them and then subsequently accepted. First of all if we are talking about shipbuilding then the fluctuations in workloads are totally different, it is a different business. If you are building a ship it is not the same as having to say to people, "You stand by on call at home and I will tell you when a ship comes in to be repaired." Once you get the order you have got 15 months in which to complete that order and therefore people have got at least for big chunks of the working year, predictable work patterns. The most difficult thing for people to swallow in the Kvaerner proposal was the disruption and the unpredictability and they did not need any agitating not to swallow that. But of course, we have seen in this House that when somebody says, "Charlie Robba has no malice", and there is a burst of laughter, what is the message that we are getting? That there are people in this House, both in the audience and in the Government who believe that Charlie Robba has malice and I can tell them there are many people in the GSLP who believe they are loaded with venom on the other side. If every time

somebody questions the legitimacy of that impression we all laugh cynically, and it is so obvious that we all want to shoot each other, well then let us get on with the civil war and then at the end of the day, hopefully, there will be a lot of dead bodies and one victor and then there will be no industrial problems, no agitation, no telephone tapping and there may not be anything else in the process. We are all susceptible to it. We can all be told by people that it is happening. I spent eight years hearing it. I had Mr Netto occupying 6 Convent Place, I had plenty of people who came to me saying they had been manipulated. Whether there was manipulation or not manipulation, I did not act on the basis that there was. But I am sure that if we had been around with friendly members of the public taping things for us we would have had an ample amount of tapes between 1988 and 1996. We have to accept that there are bitterly entrenched positions which are getting more bitter and that is happening and it started a long time ago, it did not start on the 17th May. It has been getting progressively worse and we tend to have people in our ranks primarily who perhaps express themselves in particularly graphic language which other people in other spheres of society may not do, but I have seen in this House maliciousness before which I have criticised and at the end of the day we have to live with the consequences of that. But I can tell the House quite honestly that whatever Mr Robba may have said on this occasion or on the twenty thousand other times that he calls me, it might be easier if I put a recording machine on for him and pass the tapes on to the other side, they would save themselves a lot of trouble, the reality is that we all know him as do some members of the Government and they all know what he is like when there is a dispute. They all know that in fact he makes a lot of noise about doing this and doing that and the people that have been to see the Chief Minister told him so, so why are they lying? Because at the end of the day they are not lying, they are telling the truth, the pistol was being put to their heads and they did not need any encouragement and agitating. Whether they got it or not, they did not need it and it did not make any difference, it did not alter the result and the result was not that Mr Robba persuaded Kvaerner to offer 1,900 hours and put a pistol to people's heads so that they could then subsequently agitate them about the result. The thing was landed on us and landed on us by a company that has been saying that the possibility of leaving Gibraltar, before it happened in 1994, and we had great difficulty in persuading them. I feel that part of the difficulty lies in that with these multinational companies you have not got any more the kind of access to the people who are the owners of the business where you can appeal to any sentiment other than what is going to contribute to the

bottom line. That is why I think it is amazing that a company should say it is not a question of money. At the end of the day if it is not a question of money why do they want to have people coming and going and not paying them. If a different way of payment had been found right at the beginning then the whole thing could have been made to be totally acceptable. What is unacceptable is that they get sent home without getting paid and I do not see how anybody that has been in the trade union movement can countenance the introduction of that situation and even if it is accepted under duress to see it perpetuated and extended. This is taking us back 50 years and it may have been done in other places, I do not know, and certainly the position today in Europe is that in many many parts of Europe it is true, every time there appears to be collective bargaining it is not to argue a package but to take away. In Gibraltar we have got to resist the introduction of such packages because if we do not resist them they will be spreading throughout and then there will be agitation and then there will be industrial problems and then we will get blamed presumably. It is not the position of the GSLP, the GSD or anybody else, it is the total unacceptability of throwing away what has been achieved by years of collective bargaining and industrial action combined to get benefits in working conditions which did not happen by themselves. They happened because we fought for them and although we may now be in a world which is run by the rules of the market it does not mean we have to abdicate every single principle that we have had in the last 40 years. Therefore it would be in my judgement a good result if we were now in a position to move forward with a better deal, which people would be happy with and with somebody that is prepared to live with it and make it work. Notwithstanding everything that has been said the motion that has been amended says it considers that all interested parties should work towards ensuring their continues to be a shiprepair facility. I declare myself to be an interested party, Mr Speaker, and I am saying that I offer my support and my services and whatever background knowledge I have that can contribute towards getting that shiprepair yard working with a new operator. I will not offer the Government the services of Charlie Robba.

Question put. The House divided.

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

The Hon J J Netto
The Hon Miss K Dawson
The Hon T J Bristow

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

Absent: The Hon Miss M I Montegriffo

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

The House recessed at 4.45 pm.

The House resumed at 5.00 pm.

Answers to Questions continued.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that this House do now adjourn to Friday 14th February, 1997, at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 6.45 pm on Thursday 13th February, 1997.

EDITOR'S TRANSLATION:

(1) And what I am trying to get going is that on Friday, if nothing is agreed with the Chairman who comes tonight, for all the workers to go down to the ETB and give Netto some verbal abuse.

(2) On Friday you all march down the Bateria, you close down everything, stop all the cars and let all hell loose on Netto.

(3) Trouble and more trouble, day in, day out.

(4) I do not want an agreement tomorrow, you understand?

FRIDAY 14TH FEBRUARY, 1997

The House resumed at 10.00 am.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana - Chief Minister
The Hon P C Montegriffo - Minister for Trade and Industry
The Hon 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 T J Bristow - Financial and Development Secretary

OPPOSITION:

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

ABSENT:

The Hon Miss M I Montegriffo

IN ATTENDANCE:

D J Reyes, Esq, ED - Clerk of the House of Assembly

Answers to Questions continued.

BILLS

FIRST AND SECOND READINGS

THE COMPANIES (AMENDMENT) ORDINANCE 1997

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to transpose into the laws of Gibraltar Council Directive 89/666/EEC on the disclosure requirements in respect of branches opened in Member States by certain types of company governed by the law of another Member State be read a first time.

Question put. Agreed to.

SECOND READING

HON P C MONTEGRIFFO:

I have the honour to move that the Bill be now read a second time. The main purpose of this Bill is to implement Council Directive 89/666 commonly known as the Eleventh Companies directive which deals with the disclosure requirements in respect of branches opened in another Member State by certain types of companies governed by the law of another Member State. In this respect it has nothing to do therefore with locally incorporated companies which really will have their disclosure requirements dealt with when the Fourth Company directive comes to be implemented. The amendments to introduce the requirements of the Eleventh Company directive is to be achieved, as Members will see, through amendments to our Companies Ordinance. The Eleventh Company directive deals with disclosures including the disclosure of accounting documents required to be made by branches established in the Member State of limited companies which are incorporated in another Member State or in a non-EU country. These requirements are complemented by the Bank Branches directive which is already in force in Gibraltar which establishes special rules on the disclosure on accounting documents of a branch of a credit or financial institution in a Member State which has its head office outside that state. The branch registration regime created by this legislation complements the existing place of business regime currently set out in Part IX of our Companies Ordinance. Of course, if a company within the scope of the Eleventh Companies directive established their place of business in Gibraltar which is not a branch and has no other branch in Gibraltar then that will continue to be subject to the existing place of business rules in the current regime. The current regime also remains applicable to companies which are outside the scope of the Eleventh Companies directive. The Companies Ordinance is being amended by the insertion of new parts 12 to 14 and new Schedules 11 to 14. The Bill before the House is substantially based on amendments to the UK Companies Act, 1985, which were affected by the Overseas Companies

and Credit Financial Institutions Branch Disclosure Requirements, 1992. Mr Speaker, Gibraltar's implementation of the Eleventh Companies directive has been the subject of enquiries by the European Commission. The Government are therefore keen to proceed with this legislation as soon as possible. I commend the Bill to the House.

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

HON A ISOLA:

Mr Speaker, the Opposition Members support the Bill. It obviously will enable, or rather, bring our laws into line for those companies which have their own rules, in their own Member States, to follow similar rules when practising and operating from Gibraltar. The only comment which is not peculiar to any of the sections of the amended ordinance is concern over the language used which perhaps will be more appropriate for the future and therefore perhaps useful at this stage to mention. In future Bills, as the hon Member has just mentioned, for example the Fourth Company directive, when that comes into place, when following out the UK law or European language within their own directives, I think it is dangerous to fall into the trap of merely transposing directives into existing legislation, particularly in the Companies Ordinance which goes back to 1929.

The language being used in the Ordinance that we have today and the language being used by European legislators and drafters is quite different. Therefore, I think it is important to bear in mind when drafting these Bills the possible problems that that may cause in interpretation more than anything else in the two different approaches in drafting the legislation. In this case I do not think it is particularly of much importance because it is being brought as one package which will specifically apply to companies from other Member States. But certainly in so far as other Bills, which the Government may be contemplating such as the Fourth Company directive, I think it is important that that is borne in mind because it can, and many Government Members who are practitioners, would appreciate the problems that could be caused by any difference in use of language or interpretation.

HON J J BOSSANO:

Mr Speaker, I would like to ask whether in fact there are any or many companies currently with franchise in Gibraltar which would be covered by this. I would also like to know if in the legislation "branches" has the

same meaning as provided in the directive. When we are talking about a branch, since I think a distinction has been made as to a company being here but not having a branch, what exactly then is the difference between whether a presence is here and if we know what a branch means when we are talking about something like credit institution which really means an outlet which may be incorporated anywhere in the European Union and arrives here basically as if it was operating in its home state. But in the context of the company, would we be talking about, say, somebody like Safeways having a branch in Gibraltar which was Safeways UK but which had to produce information on its Gibraltar operation which otherwise would simply be consolidated in the overall accounts of the company, is that the kind of distinction?

HON P C MONTEGRIFFO:

Mr Speaker, if I deal first with Mr Isola's point, the matter he raises has some validity.....

MR SPEAKER:

I think I should ask for other contributions first because you will be the last one to speak.

HON P C MONTEGRIFFO:

Yes, I do beg your pardon.

MR SPEAKER:

No one else wants to speak? All right, carry on.

HON P C MONTEGRIFFO:

Mr Speaker, thank you. Dealing firstly with Mr Isola's point, this is the problem that certainly I have come across in the directives that I have dealt with and the draftsmen bring to my attention, which is the desirability usually of implementing the directives in a stand-alone ordinance where these conflicts of the language that you might have from definitions in the previous ordinance which we are amending, do not arise. The problem is that that sort of transposition takes much more time in drafting terms. To actually have a stand-alone ordinance is more difficult than to bolt on an amendment to an existing ordinance but I take note of the point and I think that the draftsmen will have to remain vigilant and conscious of that.

Dealing with the Leader of the Opposition's points, the rules apply to branches as opposed to, say, subsidiaries but there are cases where a company may have a presence

and I confess that, I do not think there can be many cases, but there are cases where a company can have a presence which is not actually a branch. You might have a company that has a representative office in a jurisdiction which is not a branch and which is not a subsidiary but which is a physical presence. I think the reference to a company having a presence other than a branch is a reference to that. With regard to whether this will apply to many companies, of course I think it probably does apply to a reasonable number of companies. Some companies, we know, have got branch presence here. There are some banks here that are branches rather than subsidiaries but they would fall to be dealt with by the other legislation on bank branch legislation. I am sure that there are private companies of other jurisdictions that have a branch presence in Gibraltar for tax purposes, or for estate planning purposes, so I think it is quite possible that there is a number of companies, not in the public domain, of which there is no public knowledge, which will be affected by these rules. How will the rules work, Mr Speaker? The Leader of the Opposition mentioned Safeways. These rules do not apply to UK-incorporated companies, let me first make that clear. The rules still treat UK-incorporated companies under our own domestic rules, so that, the position of a UK company would as regards accounting disclosure, be dealt with the way a Gibraltar company would be dealt with once the Fourth Company directive is brought into place. This will apply to a Swedish company, or to an Austrian company or to a French company, which will be required in Gibraltar to disclose the same information with regard to accounts and other matters, it is not just limited to accounts, as they disclose in their domestic territory. It is really a replica of the information they have to produce. It does not substitute or exonerate them from having to undertake any disclosure requirements in their home country, in their home Member State, it simply requires them also to do so here if they have a branch presence. I think that covers the points.

Question put. Agreed to.

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

Question put. Agreed to.

THE INSURANCE COMPANIES (AMENDMENT) ORDINANCE, 1997

HON P C MONTEGRIFFO:

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

Question put. Agreed to.

SECOND READING

HON P C MONTEGRIFFO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill is designed to introduce amendments to the Insurance Ordinance to match UK standards as a step prior to achieving passporting in insurance companies and services. In this respect it is therefore not a Bill that arises from any requirements of EU directives. It is a Bill that arises from the requirements made of Gibraltar to have equivalence in UK standards and therefore to that extent goes beyond the needs of any EU directive. This legislation complements the publication of the Insurance Companies Accounts Directives Regulations, 1997, which are now being gazetted. These Regulations will come into effect once the primary legislation is passed. The Regulations do in fact implement Council Directives, namely Council Directives 91/674 and in so far as they apply to insurance companies, Council Directive 78/660 and 83/349. The enactment of this legislation completes the insurance-based legislation required to be introduced prior to Gibraltar achieving passporting rights.

Two other areas connected with insurance remain outstanding, namely the post BCCI Directive as it affects insurance and the Eighth Company directive, but both are at a very advanced stage and we have assurances that they will not delay the next stage of the passporting timetable. That next stage is the arrival in Gibraltar of the UK audit team which will look at the FSC procedures and systems. The Government are confident and hopeful that a positive audit will allow the UK to confirm that full passporting benefits are available to Gibraltar. Achieving this will represent a major step forward not just in the insurance sector but for the whole financial services industry. We then look forward to speedy progress on passporting in banking and investment services. The Government also have confidence that significant new work is going to be generated by the progress that has been made. Yesterday I referred to a new promotional campaign for captive insurance business and the fact that we have joined forces with a private sector promoter. I repeat, we are keen to encourage the

participation of others in this sector. It is important, in our view, that any marketing be coherent and be co-ordinated. Promoting financial services, as Opposition Members I am sure are aware, requires great care and the Government have determined to approach the matter in a low key way and in a fashion that will ensure coherence. We would therefore urge other private sector companies to share their marketing plans with us so that the greatest impact can be achieved. I am very hopeful that despite the difficulties that have been put our way the financial services industry will become a success story for Gibraltar. This will create employment, directly in the industry and indirectly as a result of the ancillary services which this activity provides. In ensuring that the greatest number of jobs goes to Gibraltarians I am also very keen to encourage employers in this sector to provide more training opportunities. Some have done so already in the past. I think more have to do so in the future. I would like to repeat that Government is willing to lend support, politically and financially to training schemes for both existing employees and for potential entrants in the sector. The passing of this legislation, the publication of the Regulations I have referred to and the announcement of our promotional campaign signals an important step in Gibraltar's financial services development. We look forward over the next few months to continue to work with the industry, with the FSC, with the European Legislation Unit and with the UK Departments to make sure that we fully exploit the benefits that these developments will bring to Gibraltar. I commend the Bill to the House.

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

HON J J BOSSANO:

Mr Speaker, we support the Bill which is in fact in fulfilment of the commitment that Gibraltar would have equivalent, though not necessarily identical, provisions in its laws to that that the UK has, even where that is not strictly required by Community law, in the case of financial services, but clearly the first stage that we are talking about in the question of passporting is access to the UK market itself. Of course, that access to the UK market has now been pending for something like ten years. There was already the provisions, I think, in primary legislation in the UK Act which provides for Gibraltar to be treated as a separate Member State requiring the necessary rules to be brought in by the Secretary of State and that has been what has prevented Gibraltar, to date, from capturing or attempting to capture a share of the UK business. In the process some of that business has gone elsewhere and indeed to non-EU

locations like Bermuda and the Isle of Man and Guernsey which I think are the three which seem to have benefitted most. We certainly agree with the assessment that this is an area with great potential and capable of bringing in great benefits, particularly taking into account that it is capable of generating as well as direct employment the use of infrastructure, telephones, postal services, and so forth and the taking-up of office space all of which increases the size of the economic cake. Regrettably, the fact that we have been almost there but never quite for so long, has meant that some of the business has gone elsewhere and is no longer available to us. However, it seems to be an expanding market anyway, so the size of the market itself is getting bigger and we certainly support the view that it is an area worth concentrating on because it seems to be the one where Gibraltar can provide something which virtually nobody else can which is the combination of what is available in the Isle of Man or Bermuda or Guernsey but within the boundaries of the European Union. I would like the hon Member to give us an indication, in terms of the matching of the UK standards, of where in fact the difference lies in what the UK requires of its own insurance companies. Obviously the implication of this is, that they will be deemed to be UK companies in other Member States, because if we are going to match UK standards, it can be only because that is the way that the UK requires Gibraltar to operate in order to be treated as if it were UK. It certainly cannot be necessary to enter the UK market because everybody from everywhere else in Europe can enter the UK market without needing to match UK standards. So being treated as another Member State does not require, in our view, that the UK should ask us to have UK lookalike legislation. There is an argument for, say, being treated by third parties as if we were UK. This should be on the basis that the UK and the Gibraltar legislation provide the same systems, but it would be worthwhile to know whether in fact the difference between, the minima laid down by Community requirements and what the UK requires, is in fact all that much or onerous or significant.

HON P C MONTEGRIFFO:

Mr Speaker, firstly, with regard to the UK market itself, I would not envisage that once we achieve a positive audit that any pretext or justification would remain for the UK market itself to be denied to Gibraltar business. I am aware of the difficulties in that area but I do believe that they will fall by the wayside, in that any delays there, will no longer be in any fashion a problem. Dealing with the question of UK equivalence, I am not able to give the Leader of the Opposition an expose on the difference between the requirements in all this area

which of course is hugely complicated and voluminous as to EU requirements and UK requirements. I can say that the Bill does not derive from EU Directives at all, so one can regard everything in the Bill as being not required by EU legislation. I am sure this was the case even before I took responsibility for this area, there must have been areas that when introduced to implement, became a UK equivalence issue rather than an EU compliance issue. My understanding of the position is that the UK's position is that indeed it requires Gibraltar as part of the passporting test we have to go through to match UK standards so that we do suffer, if that is the right term, we do suffer from that lack of flexibility which is that we not only have to transpose EU Directives on a minimal level, we had this problem, for example, with the Money Laundering directives, we do not only have to transpose at a minimum level but in areas which are thought by the UK to have financial services implications and certainly passporting implications, the UK requires UK equivalence in our regulation and in our supervision. That does not mean that everything has to be done exactly the same as the UK. It is possible to achieve equivalence of standards using different language and adopting a regime which is less onerous administratively. This process is a long and detailed process over many weeks and many months, involving many departments, involving many draftsmen. I am not able on my feet and without notice to point Mr Bossano to what particular section, in what particular legislation, might be different to exact UK sections where we have tried, perhaps, to meet equivalence but in a different way. In general terms I am sure that he will recall that we are required to convince the UK that our system is broadly equivalent in regulatory and supervisory terms but making allowance for the size of Gibraltar. Our supervisory regime in insurance consists of two people, or one and a half people and therefore our equivalence in that area has to be tailored by the reality of what a small jurisdiction can produce and of course we have less business anyway so it has to be measured according to our needs and requirements.

HON A ISOLA:

Mr Speaker, is the hon Member satisfied then, that bearing in mind he cannot give differences at this stage on the notice that the requirements for Gibraltar matches UK, it is not any worse or more onerous than the UK requirements, is he satisfied of that?

HON P C MONTEGRIFFO:

I am satisfied that the advice we are being given is that we are going no further than we are required to meet that

minimum condition of UK equivalence. Indeed, in supervisory terms in particular I am always keen to ensure that we do not end up with a system which is unduly onerous as regards to the work that will be attracted. I am satisfied that we have made our best effort to ensure that is the case. I take this opportunity to just mention to hon Members that I will be moving an amendment to this Ordinance. Notice has been given and I will deal with that at Committee Stage.

Question put. Agreed to.

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

Question put. Agreed to.

THE CRIMINAL PROCEDURE (AMENDMENT) ORDINANCE, 1997

HON ATTORNEY-GENERAL:

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

Question put. Agreed to.

SECOND READING

HON ATTORNEY-GENERAL:

I have the honour to move that the Bill be now read a second time. The reason for this Bill stems from a prosecution which took place towards the end of last year when a witness in a case failed to appear before the court even though properly summoned and subpoenaed. He did finally appear after a Warrant for his arrest had been issued but this instance highlighted the provisions of Section 66 of the Criminal Procedure Ordinance which provides for the powers of the court with regard to recalcitrant witnesses and enables the court to fine a person the maximum of £50. It is considered that this figure is ridiculously low and therefore the object of this Bill is to increase the maximum amount of the fine which may be imposed by the Supreme Court in such circumstances to level 3 on the standard scale which equates to the sum of £500. Mr Speaker, I commend the Bill to the House.

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

HON J J BOSSANO:

We are supporting this Bill because it is in line with the kind of changes that have been brought in over the last few years, in many areas, where there were fines which had been there a very long time and forgotten. That was, I think, the occasion when we put in the system of different levels of the standard scale as opposed to a figure so that in future, by changing the level the figure would automatically be changed in all the legislation instead of each and every Bill having to be altered. I note that the hon and Learned Attorney-General has said there has been a case recently. I imagine this is an infrequent thing, it must be relatively rare for witnesses to not want to come forward and have to be forced. Is it indeed the case that the recent case is something that has not happened for a very long time? In any case, on the general principles of the thing, quite apart from anything else, we think that all our fines in all our legislation should be moving to be related to the level of the standard scale, and not to specific figures.

HON ATTORNEY-GENERAL:

Mr Speaker, in answer to the hon Member's question, in my time as Attorney-General this is the first time this has happened. I do not think it happens very often but of course when something happens and someone catches on, it does seem to happen again and again.

Question put. Agreed to.

The Bill was read a second time.

HON ATTORNEY-GENERAL:

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

THE GIBRALTAR DEVELOPMENT CORPORATION (AMENDMENT) ORDINANCE, 1997

HON CHIEF MINISTER:

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

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, as hon Members are aware there are a number of quasi civil service type activities which are presently carried out by companies that are wholly owned by the Government of Gibraltar, namely the Gibraltar Information Bureau Limited and that it is the policy of the Government that this situation should not continue. The Government wants, in so far as is possible and practicable to bring these functions back within the public service in its more traditional and conventional sense. There are, however, problems in that there are members of the staff of Gibraltar Information Bureau Limited employed principally in such areas as the Employment and Training Board, tourism-related functions, citizens advice bureau functions, clamping functions, the GSS, all of these people are actually employees of the Gibraltar Information Bureau Limited, even though the Employment and Training Board already actually is a division of the Gibraltar Development Corporation. All the employees are registered with the Gibraltar Information Bureau Limited. In the case of tourism, they are both employees of the Gibraltar Information Bureau and indeed the function is carried out through the Gibraltar Information Bureau. The Government wishes to bring the functions more within public accountability and control but is not willing to incorporate and absorb all the people presently engaged in these activities as permanent and pensionable civil servants, nor on the other hand is it willing to dispose of that service simply to recruit new civil servants, it would be irrational and illogical. so the dilemma that the Government faced was how to bring these activities to a greater extent within an accountable public service system whilst preserving substantially the same people doing the functions without making those people civil servants. The route that the Government have chosen is to transform the Gibraltar Development Corporation into a vehicle through which relevant activities can be carried out and make the Gibraltar Development Corporation the employer so that, I have already said that the ETB is a division, the employees will become employees of the Gibraltar Development Corporation. The Gibraltar Tourism Board will become a division of the Gibraltar Development Corporation and the employees will become employees of the Gibraltar Development Corporation and so on. Therefore the Government identified a need to improve the public accountability of the Gibraltar Development Corporation given that it was going to become a vehicle, really an extension, of the arm of the civil service, or

the public service or the public administration and the object of this Bill is to do two things. At present the accounts of the Corporation, under section 24 of the Ordinance, the accounts of the Corporation says, "It shall be audited by an auditor to be appointed annually by the Corporation with the approval of the Governor", in other words, an auditor from the private sector possibly. The amendment requires the accounts of the Corporation to be audited by the Principal Auditor, in other words, as if it were a Government Department. The second amendment is introduced through section 25. Section 25 at present requires the Corporation to furnish accounts and information, accounting and financial information and statistics etc, but there is no statutory requirement for the accounts of the Gibraltar Development Corporation to be laid before the House of Assembly. So section 25 is amended by adding a new sub-section 3 requiring the Corporation's reports and accounts to be laid by the Government before the House of Assembly as soon as is reasonably practicable. The principles of this Bill is to increase the statutory and therefore mandatory requirements of accountability by making the accounts auditable, or mandatorily auditable by the Principal Auditor and requiring the Government to lay those accounts before the House of Assembly as soon as reasonably practicable. I therefore commend the Bill to the House.

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

HON J J BOSSANO:

The Opposition will vote in favour of the Bill. Let me say that in fact, as far as we are concerned, what the Bill requires the Government to do it can already do without the law being changed but it would have the freedom to do it or not do it. There is nothing to stop the Principal Auditor being appointed because he is an auditor and the accounts I think have been tabled from the first year. Certainly, the Gibraltar Development Corporation, in our view, is a vehicle which has got the potential to give the Government flexibility to undertake different activities and it was designed like that way back in 1988 but in fact very limited use has been made of it in the eight years that it has been in existence. We believe that it does enable the Government perhaps to carry out state-related functions in ways which can be more tailor-made to what it wants to do than if it is using historical structures. That is the purpose of the vehicle being there and if the Government makes greater use of it and produces better results for Gibraltar, then that is something that we will welcome.

HON CHIEF MINISTER:

Yes, Mr Speaker, I am aware that the accounts of the Gibraltar Development Corporation have in fact been laid in the past. I think I am right from memory, although I stand to be corrected, that the last set of accounts laid was 1992/93 and what the Government is now seeking to do is not just to make it mandatory that the accounts should be laid but that they should be laid as soon as reasonably practicable which is certainly not four years later. I accept what the hon Member says of course that the Government can voluntarily do this without changing the Bill. The Government policy and view is that mechanisms for public transparency should not be voluntary acts of the Government of the day. They should be required of the Government of the day by operation of law and therefore that is the reason why the Government enshrines in law what of course it is free to do voluntarily if it wants to.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

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

THE COMPANIES (AMENDMENT) BILL, 1997

THE INSURANCE COMPANIES (AMENDMENT) BILL, 1997

THE COMPANIES (AMENDMENT) BILL, 1997

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

Clause 2

HON P C MONTEGRIFFO:

Under section 2 there is a typographical error in what will be section 326(1) under Part XIII of the revised Companies Ordinance, that is on page 19. On the second line there is a reference there to Part 1, that should

become a reference to Part XII which hon Members will see is the reference on the last line of that paragraph. The other references are correct.

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

Clause 3, Schedules 11, 12, 13 and 14, were agreed to and stood part of the Bill.

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

THE INSURANCE COMPANIES (AMENDMENT) BILL, 1997,
Clauses 1 to 9 were agreed to and stood part of the Bill.

Clause 10

HON P C MONTEGRIFFO:

Mr Chairman, as I have given notice, in paragraph 10, in the section to be numbered 63A(2)(a) which appears on page 4 of the Bill, there is a need to add the word "or" after "Gibraltar" to make clear that each of those different sections are alternatives. So subsection 63A(2)(a) should read, "whose head office is in Gibraltar; or".

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

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

Clause 12

HON P C MONTEGRIFFO:

Mr Chairman, again, as I have given notice, there is a minor amendment to what will be section 75A(1) on the second line replace the word "secure" with the word "ensure". It does not really alter the meaning but it is felt by some that that meaning is best expressed by "ensure" than by "secure".

Clause 12, as amended, was agreed to and stood part of the Bill.

Clauses 13 and 14 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 Companies (Amendment) Bill, 1997, and the Insurance Companies (Amendment) Bill, 1997, have been considered in Committee and agreed to, both with amendments, and I now move that they be read a third time and passed.

Question put. The Bills were agreed to and passed.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Tuesday 25th February 1997 at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 11.20 am on Friday 14th February 1997.

TUESDAY 25TH FEBRUARY 1997

The House resumed at 10.00 am.

PRESENT:

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

GOVERNMENT:

The Hon Lt-Col E M Britto OBE, ED - Minister for Government Services and Sport
The Hon J Netto - Minister for Employment & Training and Buildings and Works
The Hon K Azopardi - Minister for the Environment and Health

OPPOSITION:

The Hon J L Baldachino
The Hon J C Perez

ABSENT:

The Hon P R Caruana
The Hon P C Montegriffo
The Hon Dr B A Linares
The Hon J J Holliday
The Hon H A Corby
The Hon Miss K Dawson
The Hon T J Bristow
The Hon J J Bossano
The Hon Miss M I Montegriffo
The Hon A Isola
The Hon J Gabay
The Hon R Mor

IN ATTENDANCE:

D J Reyes, Esq, ED - Clerk of the House of Assembly

ADJOURNMENT

The Hon the Minister for Government Services and Sport moved the adjournment of the House to Monday 17th March 1997 at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 10.05 am on Tuesday 25th February 1997.

MONDAY 17TH MARCH 1997

The House resumed at 10.10 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 Building and works
The Hon K Azopardi - Minister for the Environment and Health
The Hon Miss K Dawson - Attorney-General
The Hon T J Bristow - Financial and Development Secretary

OPPOSITION:

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

IN ATTENDANCE:

D J Reyes Esq, ED - Clerk of the House of Assembly

DOCUMENTS LAID

The Hon the Chief Minister moved under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the laying of various documents on the table.

Question put. Agreed to.

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

(1) The audited accounts of Gibraltar Community Care Ltd for the years ended 30 June 1994 and 30 June 1995.

(2) The audited accounts of Gibraltar Community Trust for the years ended 30 June 1994 and 30 June 1995.

Ordered to lie.

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

(1) Statements of Consolidated Fund Reallocations approved by the Financial and Development Secretary (Nos. 4 to 6 of 1996/97).

(2) Statement of Improvement and Development Fund Reallocations approved by the Financial and Development Secretary (No. 1 of 1996/97).

(3) Statement of Supplementary estimates No. 1 of 1996/97.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

SUSPENSION OF STANDING ORDERS

The Hon the Chief Minister moved under Standing Order 7(3) to suspending Standing Order 7(1) in order to proceed to the First and Second Readings of various Bills.

Question put. Agreed to.

THE SOCIAL SECURITY (CLOSED LONG-TERM BENEFITS AND SCHEME) (AMENDMENT) ORDINANCE 1997

HON H A CORBY:

I have the honour to move that a Bill for an Ordinance to amend the Social Security (Closed Long-Term Benefits and Scheme) Ordinance 1996 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. Mr Speaker, the amendments to the Closed Scheme Ordinance are by way of clarification. The definition of the 1955 Ordinance is being amended for the

avoidance of any doubt that the references to the 1955 Ordinance do include subsequent amendments to the Ordinance since it was enacted in 1955. The definition of 'contribution' is also being amended to cover contributions credited under the 1955 Ordinance as distinct from paid or payable in the existing definition. The amendments to the transitional provisions in Sections 6 and 7 clarify the methodology for the payment of benefits to different categories of contributors who are covered by both the closed and open scheme. The power to alter pension rates is removed. The remaining amendments are to tidy up a series of minor omissions in the main Ordinance which was brought to the House last year. Because amendments to the Regulations made under the principal Ordinance are to be amended retrospectively with effect from the 1st October 1996, prior to their making, the amendments are effected by primary legislation in this Bill rather than by amending regulation. I commend the Bill to the House.

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

HON R MOR:

Speaking on the general principles of the Bill, as the hon Minister has said, the Bill intends to clarify the Ordinance where necessary and looking through the Bill I have come across an amendment which refers to paragraph 13(1) of the original Ordinance of the closed scheme, the amendment is on page 60. In section 13(1) special provisions as to men, paragraph (c) is replaced with the following, and it says, "(c) whom he has married after attaining that age, if the following conditions are satisfied, that is to say." We go on to the actual Ordinance and 13(1) paragraph (c) says, "Whom he has married after attaining that age if the following conditions are satisfied, that is to say....."

HON CHIEF MINISTER:

The hon Member is quite right. We have not yet raised it because it is very much a Committee Stage point but this is an area in the Bill which we are going to correct at Committee Stage. There is not intended any substantive change to this section from the 1955 Ordinance, it is just that in the Closed Scheme Ordinance, as originally legislated and published, one line becomes linked to the one above it where it should have been separated. So this is an error, it is secretarial in nature, the proposed amendment, and the required amendment will be clarified at Committee Stage. The amendment has no effect on the content of the section, it is simply on the secretarial layout of the section as it has been printed

in the Closed Scheme Ordinance, but as it does not raise a matter of principle, we thought we would leave it till the Committee Stage.

HON R MOR:

The amendment also introduces new section 7A which refers to the Transitional Provisions and what seems to me is, that the intention is to apply what is normally applied in the aggregation rules where persons make contributions to different countries under EU aggregation rules and in this case they are making provisions for persons who have contributed to both the old scheme and the new scheme. One of the things that comes to mind is that this may very well bring about differences in the pension payments that will be made to pensioners in future if you consider that although in the old scheme the powers of changing benefits have been withdrawn, it does reappear under the new scheme. Consequently, if benefits are increased under the new scheme and pensioners in future will be apportioned benefits, taking into account the contributions made under the old scheme and the new scheme this would mean in effect that, for example, the younger pensioners who have made more contributions under the new scheme would be getting a higher pension. That is an anomaly that could affect the whole scheme in the future. I have nothing further to add at this stage.

HON J J BOSSANO:

Mr Speaker, what we consider seems to be happening is, that in fact rather than simply a tidying up exercise, we have some changes to the Ordinance which reflect some of the reservations we expressed last September when the Closed Scheme Bill was brought before the House. To take but one example, I raised at the time how it was that under section 38 we were making provision for the Minister to be able to increase benefits, given the fact that the whole purpose of the UK insistence on the closed scheme was that it should be incapable of the benefits being increased because of the liability to them. In fact the position was defended by the Government on the basis that putting the provision there did not mean that the benefits were going to be increased but that the closed scheme would continue to have frozen benefits so that at some hypothetical future date the Government might be able to persuade the British Government to provide additional funds for increasing the benefits for Spanish pensioners. In which case, if and when that happened, since the increasing of the benefits would then have to be subject to a resolution of this House, it would give us an opportunity to debate it and we left it at that. I must say the explanation was not a 100 per cent convincing because it seems to me that if you put a

provision that the possibility of increasing the benefits exist, then you are inviting people to suggest that the benefits should be increased. I was surprised that the UK Government, who seem to be so concerned about the liability they created for themselves and which they wanted to pass on to us, should be happier to go along with that. Therefore, simply to say we are now repealing something that was defended as being worth including as recently as last September, presumably what we are going to get is a more intelligent explanation than simply to say we are repealing it. We know we are repealing it, we read it.

There are a number of other areas where, for example, in the question of the pre-occupational pension payments we questioned whether the way the Bill was drafted in September made sense since it appeared to be generating a liability for the two kinds of payments. I note that now we are deleting the reference to the pre-occupational pensions payment even though at the time we were told that the description of the payments that had to be made should be at the same description and at the same rate as the Ordinance, which I thought was a very clear exposition of what it had to be. We were then told that this was one of the essential clauses on the Bill which had been carefully studied by Mrs Astbury and every expert in the land. Of course, if it is that some of our comments since then have led to a second look being taken and as a consequence of that things in the definitions tightened up so that it is not possible to put different interpretations, then we welcome that that should be happening because that is, as far as we are concerned, the contribution that we have to make to legislation when it is brought to the House to look at it and raise the doubts that it generates in our minds so that they can be looked at if they have not been looked at by other people before.

The question of contributions being paid or credited, which was another issue which we raised in September and presumably, although we raised it in different clauses by extending the definition in the part of the Ordinance that deals with definitions so that contribution includes a credit as well as a contribution that was either paid or payable, I imagine that the effect of that will be that even if in subsequent clauses there is a reference to the contribution being paid because of the definition in the first introductory paragraph of the Ordinance, that will not take care of the proposal we made last September where it seemed to us that the fact that in some clauses there was only a reference to it being paid could affect the way the contributions there could be circulated.

We are not absolutely sure that what is being done in altering the pre-occupational pensions payments as at the 1st October 1996 in terms of how it integrates into the closed term benefit fund does the job in an entirely foolproof manner but presumably, given the fact that the thing has now been in operation since October the changes that are being brought in to put right what appeared to be subject to more than one interpretation in the original version will be curing that. In the area of the new element, which is the transitional provisions, there is a reference to the closed and to the new open scheme just like there is a reference in the open scheme to the closed scheme. That would suggest that really if we look at this and on the Bill that is due to come up before the House, there is now a level of continuity between the two that makes it almost tantamount to restoring what was suspended on the 1st January 1994. We have gone through this whole saga because the UK initially insisted on payments stopping in January 1994 and now have agreed to the restoration of payments from January 1994 but we shall have more to say on that when we come to the open scheme. The fact that the open scheme is mentioned here and that the closed scheme is mentioned there is almost as if there was only one scheme even if it is divided into two parts which is certainly not what was the UK view, which is, that there should be a clear break between the two. It seems to be doing the job in a different way from the way they were saying in 1996 was needed. Given the fact that that is the case it would certainly have been a far less complex thing to have put it all back in as at the 1st January 1994 because in fact the bulk of the provisions are simply what was there already. We are not providing new benefits or additional benefits or anything else, what we are doing is providing what was stopped in 1994.

HON CHIEF MINISTER:

Mr Speaker, the transitional provisions as the hon the Opposition spokesman for Social Affairs has pointed out are there only and I think he himself drew the parallel with the aggregation, international aggregation provisions, they are there only for the purposes of calculating the average, the yearly average, of weekly contributions. In other words, when you are calculating somebody's entitlement to pension under the closed scheme you have got to work out a weekly average contribution as has always been necessary. That person is entitled to have taken into account also contributions that he has made post-31st December 1993 under the new scheme and vice versa. Beneficiaries under the new scheme, when they are having their weekly average contributions calculated, hon Members know that you are not entitled to any level of pension unless that weekly average is a

minimum of 13 and therefore people who have made contributions under the new scheme are also entitled to have any pre-31st December 1993, in other words contributions made under the old scheme taken into consideration for the purposes of working out their average in the other scheme. In other words, for the purposes of working out weekly averages under both schemes, what is taken into account is the contributions that you have made to both schemes together but then of course under each scheme you are only paid the rate of benefit pro rata that you are entitled to. In other words, the transitional provisions in 7A really boil down to the statement that for the purposes of working out your contribution under the closed scheme and hon Members will have noticed that there is an equivalent provision in the proposed open scheme that we will be debating in a moment, so limiting myself just to this Bill, what this says is, that when calculating your weekly average contributions under the closed scheme we will take into arithmetical account contributions made under the new scheme for the purposes of working out the weekly average. It does not as the hon Member himself has correctly identified result in any body obtaining as a matter of the operation of this section any higher or lower pension, except I think the point the hon Member was making was that under the new scheme pensions can be increased and it is certainly true that if any future Government of Gibraltar or any future Minister with responsibility for social affairs decided to invoke its power to increase the rates of pension, then it would certainly be the case that people that were getting pensions under both schemes would end up getting it at a lower rate under the closed scheme and at a higher rate under the new scheme and indeed that people that were only getting their pensions under the open scheme would get a higher pension than people that were only getting it under the closed scheme. All those things are true but of course they are things that will have to be taken into account and addressed somehow if and when a future Government may make the decision. The policy of the Government and the reason why it is in this scheme and indeed the reason why we put it in the closed scheme was that in the Government's view there ought not to be a social security scheme in Gibraltar in which the Government does not have the statutory power to alter rates. Another thing is whether we do or we do not and certainly as I shall be commenting in a moment in respect of the closed scheme the Government has an understanding, an agreement, on the part of the United Kingdom Government, an expectation that the rates will not be increased under the closed scheme. One thing is to have the power to do it and the other thing is to do it or not and I certainly do not accept the principle, although we have acceded to it in respect of the closed scheme at the

United Kingdom's request, I do not accept the principle that Gibraltar Governments cannot be trusted to honour their agreement. The Gibraltar Government have agreed that there will not be an increase in pension rates under the closed scheme, it is not necessary for that agreement to be honoured and the Government should not have the power to do so. If we were minded to use that power to increase rates under the closed scheme, in breach of an agreement, we might just as easily bring amending legislation at some future date to give us that power. So the question of whether we have got power and whether we use it in breach of an agreement with the United Kingdom are two very different things. So certainly what the hon Member has said is true, the power to increase pension rates under the open scheme exist and if it is used it would certainly result in anomalies as between people getting two different rates of pensions under each scheme and people who are only getting pensions under one of the schemes will be getting them at different rates and that will have to be taken into account. The hon Member said that this was not just simply a tidying up exercise. I think that is right and I think it was recognised in the opening address of my colleague the Minister for Social Affairs. The hon Leader of the Opposition is also right when he says that he hopes and expects that the Opposition's comments on legislation are taken seriously and constructively as I hope my or our comments used to be during the last four years when we commented on their legislation. This is the whole purpose of bringing legislation to the House, especially legislation where there is no political controversy to the party then we might in such case argue about the wisdom of the policy underlying the legislation but certainly even then in relation to the technical aspects and certainly in relation to technical legislation the comments made by the Opposition in this Bill and indeed in any other Bill that we might subsequently debate in this House are taken seriously. Certainly the Leader of the Opposition's comments were analysed and those that were found to have merit, either outright merit or to raise ambiguity which might just as easily be dealt with than left in the air, were addressed. The amendment in clause 3(14) of the Bill amending Section 38 to remove the rates of benefit, is an amendment that we bring to the House at the request of the United Kingdom Government who felt more comfortable, let us put it that way, this power not existing. It is in my opinion somewhat academic but still the point is not that important from our point of view but it was worth arguing about. I do not think that there was anything in the agreement that the previous administration entered into with the British Government to the effect that the legislation would not include the power although certainly there was an agreement that the pension rates would be frozen and not

increased. This amendment is not inconsistent with that agreement and therefore if the United Kingdom Government feels strongly, that they are more comfortable without this power, well so be it. The amendment to the rates of benefit, where it previously used to speak of people now being entitled to benefits under this Ordinance of the same description and rate as in the transitional regulations, the hon Member raised the question whether that entitled everybody to a full pension under the new Bill regardless of the allocation between the two given that they were presently receiving the full amount under the transitional rules. That has been considered by the experts. They do not entirely agree that the matter means what the Leader of the Opposition suggested but certainly they accepted that it was open to that interpretation. As it was open to that interpretation, the Government took the view that it should simply be clarified to put it beyond ambiguous doubt and that it ought to be done in the interest of good legislation. That is certainly one of the precautionary amendments that follows from the comments of the Leader of the Opposition when this matter was debated some time ago. The third one that the Leader of the Opposition mentioned, the amendment to the definition of contribution to include paid or credited, falls into both categories. In other words, there are many references throughout the Bill where it says, "paid or payable" and the hon Member asked, "Well, should it not in all cases say 'or credited'?" The answer to that question is no, except in one case. In other words, in all the instances in the Ordinance where it says, "paid or payable", it means paid or payable except in one where indeed it should have said "or credited". This is the amendment introduced to section 3(1) of the Ordinance and I think that is introduced by section 3(3) of the Bill on page 57, which amends section 3(1). In section 3(1) of the original Ordinance as it was legislated reads, "There shall be established a fund called a 'Closed Long-Term Benefits Fund' for the purposes of paying benefits in accordance with the following provisions of this Ordinance to persons who were insured under the 1955 Ordinance and whose entitlement to benefits under this Ordinance derives from contributions paid under the 1955 Ordinance". Clearly, there it should have said "paid or credited" otherwise no payments would be allowed under the entire Bill, "to people who in respect of credited contributions", because it would not have been a charge on the Fund. Certainly, in section 3(1) of the Ordinance there has to be a definition, a reference to credit, and that is introduced specifically by that amendment in section 3(3) to section 3(1) of the Bill. But having reviewed each reference to 'paid or payable' in the Ordinance the technicians have come to the conclusion that there should not be a reference to payable. The

alteration to the definition is of course on a "case may be" basis. The hon Members will I am sure have noticed that the definition of contribution is amended to read, "Contribution means a contribution paid or payable or credited as the case may be". It is certainly not there for the case that every time that there is a reference to contribution in the Bill, it means that it means, "paid, payable or credited" because it is all qualified by the words "as the case may be", and therefore it is still a matter for what reference there is in which section of the Ordinance. But certainly the hon Member is right in saying that all of these points were revisited following the remarks of the Opposition at the previous debate when this matter first came to this House and that is the extent to which it has been considered necessary and/or desirable to introduce amendments to accommodate those points.

It is inevitable that there has to be a connectivity rather than continuity between the two schemes, if only for the reasons that I have just mentioned about calculation of weekly averages. There is continuity only in the sense that the closed scheme is restored. In other words, what was done during the last House was, that during the last administration the SIF 1955 Ordinance was repealed and the scheme established under it therefore wound-down with effect from 31st December 1993. The closed scheme in effect restores the position to what it was before that. There is then continuity, which I think is the word the Leader of the Opposition used, to this extent only, and that is, that the new scheme that we are about to debate later on the agenda, on the Order Paper, is retrospective to the 1st January 1994 and therefore there is continuity in time. There is also continuity, and this is something that we said in the previous debate on the closed scheme was a matter of Government policy, in that the Government had decided at this stage not to review the pensions scheme in Gibraltar, which it could have done I suppose under the open scheme benefit, so there is continuity in the sense that the old scheme which was put back in respect of, up to the period 31st December 1993, also forms the basis of the open scheme which is from the 1st January 1994 onwards into the foreseeable future. The UK Government certainly have insisted on what they call "the clean break". They wanted clear water between the suspended arrangements and the new arrangements. Of course, that clear water does not come in the form of substantive changes to the scheme. Their concern, and of course they have approved this legislation, their concern is that it should be seen to be legalistically a distinct measure. In other words, that this is not a question of recommending the Ordinance which could not be recommenced, we debated this at length in the last House,

which had been repealed. Their definition of "clean break" apparently, and I take the point made by the Leader of the Opposition that it seems somewhat disingenuous, but their definition of "clean break" is that it should be seen to be a premeditated act of re-introduction rather than blurring the fact that the original one was suspended. It is a matter for them, they are satisfied with this legislation. It is a clean break in the sense that it comes in the form of new legislation but of course as hon Members have pointed out, the substantive provisions are very similar and hon Members will notice when they read the Long Title of the open scheme, they will see that it talks of establishing a replacement scheme rather than re-establishing the old scheme or continuing the scheme or something like that and this is the language which is intended to acknowledge the fact that this is a new start, albeit a new start with old schemes. It is frankly rather semantic from where I am sitting but they seem to attach some important to it so, so be it. I think that is all that I need to say.

The final point that I would like to make is just to give a word of explanation as to why hon Members had received a letter giving notice of amendments to this Bill which suggested that the references in the Bill as published, to amendments to the regulations made under the Ordinance, that that was in error and that it should not have been done in the Bill but done separately. But in fact that was not an error. The explanation which has already been given by my hon Colleague is that there is doubt, this is sort of a legalistic matter, there is doubt about whether in fact you can, in the absence of specific provision in the enabling legislation, whether you can amend regulations retrospectively. In other words if an enabling Ordinance that gives power to make regulations says, for example, "The Minister will have power to make regulations for this, that or the other" and he makes those Regulations and after a period of time he wishes to amend those Regulations, well clearly, he can introduce amendments effective from the date when he introduces them. But there is legalistic doubt as to whether in the absence of a specific power in the enabling legislation to make regulations retrospectively there is doubt whether such retrospective amendment to regulations would be intra or ultra vires. That is why the amendments to the regulations are introduced in the Bill because they are retrospective not because of the content. The content of the regulation could have been made by new regulation if it had been sufficient for them to start from the date of their publication in the Gazette but because they are backdated to the date that they will commence, 1st October 1996, it was thought necessary, and therefore, what was issued in error was

the letter suggesting that it needed an amendment rather than the original inclusion in the Bill.

Question put. Agreed to.

HON H A CORBY:

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

Question put. Agreed to.

THE SOCIAL SECURITY (OPEN LONG-TERM BENEFITS SCHEME) ORDINANCE 1997

HON H A CORBY:

I have the honour to move that a Bill for an Ordinance to establish a replacement scheme to the Social Security (Insurance) Ordinance 1955 for the purpose of providing pecuniary benefits by way of Old Age Pensions, Widows' Benefit, Guardian's Allowance and Widower's Pension in respect of contributions paid by or credited to insured persons after the 31st day of December 1993 and for connected purposes be read a first time.

Question put. Agreed to.

HON H A CORBY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, as I explained in this House on the 4th September 1996, when presenting the Closed Scheme Ordinance, an agreement had been reached between Her Majesty's Government and the previous Government of Gibraltar in February 1996 which addressed the question of existing and future pension arrangements to be put in place in Gibraltar. The Bill now before the House concludes that agreement. It gives legislative effect to the creation of a new pension scheme for current and future contributors backdated to the 1st January 1994. The Bill essentially replicates the relevant provisions under the 1955 Ordinance and is presented in six parts. Part 1 makes general provision for the normal title and interpretation clauses. Part 2 describes the insured persons, the sourcing of funds and makes provision for the payment and collection of contributions. The main innovative feature is section 3 and 3(4) which provides for equalisation of pensionable age as between men and women by not later than the 31st December 2020. I should explain that progressive steps towards equalisation of pensionable age is a EU requirement. The target year of 2020 has been identified in line with the year targeted by the United Kingdom. In the case of Gibraltar the

present aim is to equalise at the age of 60 for both men and women. In the United Kingdom the reverse applies in that equalisation is gradually being introduced not at age 60 but at 65. The Gibraltar Government considers that the right to entitlement of an old age pension should be progressive, not regressive; aim of policy for social improvements. However, the costs involved are not inconsiderable. Equalisation at the age of 60 with immediate effect would cost the Pension Fund an additional £3 million per annum. It is therefore necessary, indeed financially prudent, to make provision for a phased transition. Part 3 establishes the Open Long-Term Benefits Fund. I would only highlight the transitional provisions in respect of the interim arrangements under the (Pre-Occupational Pensions) Levy Regulations 1993. For purely accounting purposes monies standing for the credit of the pre-occupational pension payments fund on the 31st March 1997 will be credited to the new fund. This does not alter the nature of the retrospective provisions of the Bill now before the House. Part 4 describes the benefits payable and conditions applicable to contributors. They basically reproduce the provisions under the 1955 Ordinance, including of course the necessary transitional provisions in moving to a new scheme. The main difference lies in section 12 where provision is made for the calculation of benefits on the basis of a pro rata formula. Part 5 deals with administrative procedures and legal proceedings in keeping with past practices. Tougher provision is made for penalties of offences committed under the new Ordinance. Part 6 miscellaneous, again provides for those additional features of the new pension scheme common to area registration. The provision of a schedule to the Bill are also largely replicating earlier legislation. I commend the Bill to the House.

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

HON R MOR:

I have taken note of what the hon Minister has said with reference to the equalisation of ages which is something new which has been introduced. Otherwise the scheme as such, as was mentioned before, is very much practically a further re-enactment of the 1955 Ordinance. The last time we debated this issue, when the closed scheme was proposed, there were certain reservations expressed by the Opposition especially as regards any possible infringement on European Union law on the basis of discrimination. During that debate the Chief Minister did say that equalisation must be immediate if a new scheme was brought into effect, I am not sure whether that is the position, at least my understanding at the

time was that. Also differences between the treatment of sexes in other sections of the Bill, which again allows for discrimination of sexes, which has been against European Union law, and as I say, it was my understanding that whilst time could be given to correct this on long standing schemes, that if new schemes were to be introduced, the equalisation should be immediate. Obviously, I will wait for any explanations on this. Otherwise I think most of the clauses contained in the Bill have already been debated during the previous debate given that it is practically the same re-enactment again. I do not think I need to go into all the other clauses as well. We will be reserving our position until we clarify some of the things.

HON J J BOSSANO:

If we just look at the question of the equalisation of retirement, where the Minister has said that the objective would be to equalise at the age of 60 and not at the age of 65 as has been done in the United Kingdom, in fact there is no provision for equalisation in the Closed Long-Term Scheme, and there is a provision for equalisation here. That in itself immediately, I think, creates a contradiction with the calculation of benefits pro rata to the contributions made before 1994 and post-1994, if in one case you are calculating it to the age of 65 and in the other case you are calculating it to the age of 60. Quite independent of that, in September, we were told that in fact the requirement under Community law was that there was time given for existing schemes to phase in the equalisation but that you could not commence a new scheme which did not have from the beginning the equalisation. Certainly, that was the view of the experts before in the United Kingdom and I assume that the experts have once again changed their minds in this as they do with monotonous regularity. Given the fact that there was a certain logic to the view of the experts, that is to say, that in any provision for changes that the Community brings in there is normally a grandfathering provision which allows what is already in place to be altered over time, but the grandfathering provision does not apply to new entities starting on the date after the Directive has introduced those requirements. In fact, the ability to phase in equalisation in this Ordinance lends weight to the argument that the Ordinance is not in fact the creation of a new scheme to replace the old scheme that has been repealed. What we have is a scheme which counts the contributions that have been made since 1955 and pays the benefits that would have been paid since 1955 with the last amendments made which were in 1988 when the United Kingdom made it a condition that benefits had to be frozen otherwise the cost to them would go above the £210

million. Since virtually everything else, other than that, is providing in the new scheme what was in the old scheme and what is in the closed scheme, I would have thought that anybody looking at the three pieces of legislation, the 1955 Ordinance, the 1996 Closed Ordinance and the 1997 Open Ordinance, will be hard put to tell which is which, they all look the same. If of course the Government have been told that the clean break, which was considered to be so essential to protect them from challenge and contingent liabilities is achieved by doing it this way, then I think what we want to put clear is that we are supporting it on the understanding, that if they are wrong, and anybody can challenge this, or they are right, if they believe that they are entitled to claim something, then of course if such a challenge is materialised and proves successful, it will be the UK that will meet the Bill given that it is their advice as has been the case on other occasions in the past in relation to social security that is being taken. Therefore we will support this Bill because, frankly, what this Bill does, as far as we are concerned, is it puts back everything as it was in 1993 before the UK decided that it had to be stopped in 1993. It certainly means that the Government, in our view, should be looking at ways of protecting our own people in the knowledge that anything we do with this is liable to bring with it consequences which the UK may well then argue are our responsibility because we are changing this.

If we look indeed at the Bill, since we are talking on the general principles, it is difficult to understand how one can argue that there is a need to include, for example in part 4, under the benefits, a provision that allows somebody to get a pro rata payment of the frozen benefits in part 2 of the second schedule. So that means that what we are saying in this Ordinance is that an old age pensioner after 1994, who retires not having lived in Gibraltar since 1970, would be entitled to a pro rata payment under this Ordinance on a full pension of 60 pence a week. He can only be entitled to a proportion of the 60 pence a week under this scheme because of the stamps that he has paid since 1994. But how can he have paid stamps since 1994 if he has not lived here since 1970? The only reason why that is there is because it was there in 1955. We are making a provision in the new law simply by copying it from the old law but it is a provision that is incapable of implementation because, if the person has to aggregate his contributions since 1994 in order to get a pro rata payment of the benefit that he would have had only if he left Gibraltar in 1970, how did he make up the contributions since 1994 which are being counted under the rules provided in the Ordinance? I think one of the dangers therefore in simply putting the

thing in wholesale is of course that the circumstantial evidence that this is the 1955 Ordinance in all but name, is very conclusive I would have thought. Frankly, I think if we had restored the position of the 1955 Ordinance, which I think could have been done but then Government Members know that I do not agree with their analysis that it was impossible to do, I think it would have been possible to do that with less complication and protect the position of the UK equally. I was not able to persuade the British Government that there was no need to go down this route in order to protect their position but it seems to me that in any case the manner in which we have gone down this route is as if we had restored the 1955 Ordinance and I have given that particular example because it is one that is self-evident, I would have thought. I am sure that if we actually went through every single clause and did a similar exercise there are bound to be similar provisions in respect of other things and essentially what we are saying is, the contribution record starts when the Ordinance started in 1955. Let me say, that I do not agree that the only way that it can be done is the equivalent of aggregation and apportionment, which the Chief Minister said was the definition that I had used before, in the sense that I believe it is possible to draft rules which say, "The benefit shall be so and so under the closed scheme based on contributions paid up to December 1993 and a different formula for eligibility to benefits based on contributions paid since the 1st January 1994." It is possible to do that and to produce two separate sets of calculations which would not prejudice the position of anybody from what it would have been had the 1955 scheme not come to an end in December 1993. An alternative way is, the way that this Ordinance does it, which is essentially to say hypothetically, "If neither of these two Bills were in existence the person retiring in 1998, having been insured since 1955 and having paid so much into the Social Insurance Fund will get a pension based on having an average of 50 contributions a year since 1955, and pro rata payments if those contributions are less." What we are doing is then saying, "But that hypothetical payment, that hypothetical non-existent situation, is now going to be reflected in a real life situation by apportioning what has happened since 1994 through the creation of the levy and the pre-occupational payments, which were temporary arrangements which will count as if they had been in this Ordinance since 1994 and share out the cost of that pension partly to the closed scheme and partly to the new scheme." That, as we understand it is what this Bill does and that is why there is a mirror provision in the closed scheme and in the open scheme. Where in the closed scheme you hypothetically assume there is no open scheme and then do a pro rata payment and in the open scheme you hypothetically assume there is no closed scheme and do a

pro rata payment. That, plus the other features of the Bill, including the fact that we are under no obligation to equalise until the year 2020 as if the scheme was not new, plus references to provisions in the 1955 Ordinance which are incapable of implementation if the scheme is new, in my view, creates a framework and we are supporting this because clearly, what we are doing is restoring what had to be ended which we did not particularly want to end but which we had to in order to deal with the UK which made them pay the Bill for the Spaniards. Really the comments I am making are not in terms of criticising anything but simply pointing out that these are inherent dangers that we see in this and that again since all this has been cleared by London, our view is, that if London has cleared all this and they are happy that this is not going to be a time bomb ticking away, then that is fine, as long as it is their time bomb, not ours.

HON CHIEF MINISTER:

I recognise that it is just all hypothetical banter because the Leader of the Opposition has himself recognised there is more than one way of skinning a cat and this particular cat has been skinned in this way in terms of the apportionment and pro rata transitional provisions. But that said, I do not agree with the hon Member where he says that it would have been possible to do it yet another way which would have been completely disconnected mathematical formulae creating benefits in the new scheme based on contributions paid after the 31st December 1993 and benefits from the closed scheme based on contributions made prior to the 31st December 1993. The reason why it is not possible to do it that way is the point that I made in answer to a point made by his Colleague the spokesman for Social Affairs that you have to link the entitlements under the two schemes for the purposes of calculating the weekly average. In other words, in calculating the benefit under the open scheme, for example, you have got to reckon with the contributions paid under the closed scheme and vice versa and therefore the moment that you have to lump the contributions of both schemes together for the purposes of computing a weekly average which throws up an entitlement, the moment you lump them together you have then got to subtract, there is no way of arriving at what the pension rate that you are entitled to under either of the two schemes except by a process of subtraction because you have added them together for the purposes of calculating what the hon Member correctly calls the theoretical rate but in any case this is the view of the actuaries and this is the way that they said it could be done but it seems clear to me that the suggestion that it was possible, which I think is what the Leader of the

Opposition said, that you have got to have two completely free standing bits of legislation in which you could calculate your entitlement under the closed scheme by reference only to contributions paid before the 31st December 1993 and that then you can have a completely separate Ordinance in which you could calculate your entitlement to benefits under the open scheme by reference only to contributions paid after the 1st January 1994 the suggestion that that is possible, seems to me to be wrong given that we have got to link it for the purposes of the weekly average unless the hon Member can devise a model which breaks away from the concept of weekly average contributions, with yearly average weekly contributions. I do not know whether he wants to have a word on that.

HON J J BOSSANO:

It is not that it is academic and it is clear that it was not possible to do it once we legislate requiring the opposite. What I am saying is that when we were discussing the matter with London we were discussing it on the premise that that is what was going to be done, that there would be two separate schemes and that in fact the greater the difference between the new one and the old one the better the protective mechanism. In fact, we have finished up with something where the differences are difficult to find. What I am saying is, in our view this is one way to do it but it is not the only way to do it and in our view it is possible to have a way of paying a pension from the 1994 fund and a pension from the 1993 fund. In any scheme that you start from zero one of the things that you have to do is to work out people's entitlement to benefits on the basis that their entitlement to benefits cannot be generated by contributions made prior to the start date because it is not possible to make contributions prior to the start date. This is what had to be done in 1955 when there was no scheme in existence and therefore you then have a formula which takes into account, in arriving at the averages what was possible to pay so that one cannot ask people to have a greater number of contributions into a fund than were possible by the passage of time since the fund started. That is what it does with new funds. Of course, with existing funds that is not done because the averaging out itself changes the amount of contributions one requires, the longer the fund has been in existence. In fact the 1955 fund would not have matured until the year 2000 because there is a working life of 45 years between the age of 20 and the age of 65 and the fund came to an end before it reached maturity. This is not a scheme which is a new scheme which therefore has those characteristics that are inherent in new schemes. Our position therefore is that we do not agree that it is

impossible because in fact when we are working on the premise that that was the way it should be done and that was the way it would be done but it has been done in a way which has satisfied the UK and therefore, that is fine except that it goes contrary to every argument they used in 1996. I think the Member has not addressed why he feels that we are talking about giving people a proportion of 60 pence a week because they have not lived here since 1970 and yet we are counting the contributions they have made since 1994.

HON CHIEF MINISTER:

The hon Member says that they were working on a basis of doing it differently. I have to say that no one in the Government administration has been able to produce any working papers on any drafting. The reality of the matter is that at the time of the election in May 1996 no work had been done in relation to detailed drafting of the pensions legislation, all this is starting from a complete new sheet. No thinking had been done. I know that the hon Member had had one working meeting with Mr Curran but no one had put pen to paper to draft or to devise schemes and the fact of the matter is that when our local pension people in the form of a group that the Government put together to advise the Government on this issue considered the question of the apportionment of entitlement, they quickly reached the conclusion that such formula as the one contained in this Bill would be required and the United Kingdom agreed. I do not know what fears or concerns the United Kingdom had before May. All I can say is that this formula is a formula which is in fact one that they have put up changing the wording of the formula that we had put up. The hon Member may be right in saying that it might have been possible to treat the open scheme as a brand new scheme and then use the sort of entitlement entrance provision that one would in an open scheme but why should one want to do that when there is a historical reality that one can actually use as actual empirical data rather than speculate with formulas that may or may not address every case properly. I think there is no need to dwell on that. I think the only point that the Leader of the Opposition was making was that the Government had chosen to do it one way and that there would have been other ways if we had wanted to do it. But I do not think it has been suggested that this way does not work. The Leader of the Opposition persists with his view that the 1955 Ordinance could be somehow resuscitated. I do not want to engage in a legalistic debate because I recognise the fact that I am a lawyer and he is not, but he must really acknowledge the facts as they are and not perhaps as he thinks that they are but then when the lawyers put his instructions into effect they did something different and did not

explain it to him and he is at cross purposes with what happened. What actually happened in 1993, he may not remember this, but what actually happened was that all the provisions that a Bill came to the House..... or was it done by Regulation? In either case, by Regulation, regulations were published which in effect in layman's language said, "All the sections in the Social Insurance Ordinance.....", the 1955 Ordinance, "which deal with old age pensions, widows' pensions.....", in other words all the things that we are now concerned with in this new legislation, all those sections are repealed and it clearly says, "are repealed". As a matter of trite parliamentary and legalistic fact, once an Ordinance has been repealed, all the relevant sections in an Ordinance have been repealed, one cannot resuscitate them except by re-legislating because repealing means that they are off the statute books and the only way one can put something back on the statute books which is off the statute book is in effect to start again by new legislation. We could have introduced the new provisions by regulations instead of by legislation but it would still have required a new legislative act. If the hon Member still believes that there was some way that the 1955 Ordinance could quietly have been reactivated, given that he had repealed all the relevant sections in it, then I would urge him to take legal advice because I am certain that the legal advice will be to the effect that it could not be done in any way. In other words, once repealed, legislation has got to be re-introduced and the only way to re-introduce legislation is by a legislative act be it by primary or subsidiary legislation but by a new legislative act and that is for sure.

On this question of equalisation, let me say that the United Kingdom Government's position initially was that we should equalise immediately and I said our position was, "Well, look, why should we equalise immediately, you have not equalised immediately and there is no requirement under EU law to equalise immediately". Before I go to explain what actually the European Union requirements are on equalisation, one of the concerns that one had with equalisation and this is the point that I raised in my discussion with the UK Government officials is, "Look if you force me to equalise under the new scheme now, because it is a new Bill, because it is a new legislative act, and that is the justification for you saying because it is a new legislation, EU law requires, which it does not, but let us say that EU law did require you to equalise simply because it is new legislation and therefore you are required to equalise immediately," I said, "well, look, the closed scheme is equally new legislation so why do you not require me to equalise under the closed scheme but of course if you require me to equalise under the close scheme who is

going to pay the cost of the Spanish pensions to the pre-1969 male 60 to 65? I am not going to equalise by penalising our women. I am going to equalise by benefiting our men and therefore who is going to pay the Spanish pension bill in respect of five years advancement of pension rights to 60 year old pre-1969 Spanish pensions?" I think that that argument was persuasive. The result was that we were able to persuade the United Kingdom Government of two things. Firstly, that the fact that this was a new legislative act, whether an Ordinance or Regulation, was not the test under European Union law as to the requirement for immediate equalisation. What the European Union law requires is Member States to take and I quote, "progressive steps towards equalisation". that is the requirement of the Directive, "progressive steps" and that if there are new schemes in respect of new schemes the equalisation must be from the first day. In other words, in respect of existing schemes there must be progressive steps for equalisation. In respect of new schemes there must be immediate equalisation but of course "new" does not mean newly-introduced by new legislation. "New", and there is legal authority which we found in the European Court of Justice and there have been cases of people that have tried on such claim, "new" means schemes in which there is a substantive material change in the nature and extent of the benefits. Therefore the test of newness is not whether we introduce it on a new green bit of paper called the 1997 Bill as opposed to the 1993 Bill, that is not the test of newness which in turn triggers the obligation to equalise, the test of newness in European Union law is whether there is any real substantive change in the nature, extent and entitlement to the benefit. That is why hon Members will remember when we first brought the closed scheme to the House we said we want there to be as few changes as possible precisely from the 1955 scheme, precisely so that no one could argue or we do not potentially fall foul of the definition of newness. In other words, to the extent that we replicated the 1955 Ordinance there were no grounds to argue that this was a new scheme. Yes, the hon Member may wish to smile, but this is exactly the point that I made, which if he does not recognise clearly, he did not then understand back in the debate of the closed scheme. So therefore whether this is introduced by new legislation or by regulation which would in any case be necessary given that the previous one had been repealed, the danger of having to comply with an immediate equalisation requirement under European law did not arise from the fact that it was new legislation but would have arisen if the scheme had been changed to the point that the Commission could have argued that this is in nature and in substance a different sort of scheme, a new scheme in the sense of creating different rights, different

benefits, of a different nature and of course we have been careful to stay on the right side of that line so that this could be argued within the context of the European definition of newness not to be a new scheme. I think it is implicit in the remarks that the Leader of the Opposition has made so far this morning, that it must be clear to anybody that can read, that this new legislation is in no sense a new scheme in the context of that definition of newness.

HON J J BOSSANO:

All the arguments that he has put about why it should not be a new scheme was about the legislation that he brought last September when it was very important that the closed scheme should not be seen to be a new scheme. Therefore he has just said that he told us in September that they wanted to change as little as possible from the 1955 Ordinance because the closed scheme was important that it should not be a new scheme but he also said that if we look at this one it is quite obvious that this one is not a new scheme so in fact what we have is two old schemes and no new scheme. Then why is it that in this one we have to put a provision for equalising age and not in the other one which is also an old scheme?

HON CHIEF MINISTER:

The principles are in fact the same. In other words, the definition of "newness", from the point of view of the European Commission, is exactly the same for both schemes and therefore it was important that both schemes should not be new as defined by the Commission. Of course, the Commission wants to be satisfied that we are complying with an obligation that everybody in the Community has regardless of those schemes and that is to make progressive steps towards equalisation. The United Kingdom, for example, are making very slow progressive steps. Hon Members know that they are going to equalise by the year 2020. The United Kingdom Government suggested that if we manifested an intention to comply with the universal requirements on equalisation, which is that there should be progressive steps, that the Commission would recognise this as a Bill which was consistent with the law. Of course, it was not necessary to say so because the fact that your legislation does not signify a requirement to equalise by the year 2020 does not mean that one will not in fact equalise progressively but it was thought helpful in obtaining a closure of the infractions fiche in the European Commission that the legislation demonstrated an acknowledgement of the progressive steps to equalisation obligation and an intention on behalf of Gibraltar to honour that obligation at the same rate and with the same latitude of

transitional provisions as any other Government in the Community had. In other words, so long as we were equalising by progressive steps, we were honouring our obligations and we had no intention of not honouring, so it was of course necessary to preserve the non-newness of the new scheme because had the new scheme been..... had the Commission regarded the new scheme or the open scheme, let us call it, had the Commission considered the open scheme to have been a new scheme then we would have been required to equalise immediately and they could only have found it to be a new scheme if it had introduced benefits, new entitlements, in other words if the scheme in its nature had been new and therefore what the hon Member has said is completely right. Both schemes need to be the same as the 1955 in order to be safe from that aspect and it is true that when we debated the closed scheme, I think it was back in September we left open the door, in other words, we indicated that we might consider changes to the open scheme for future years but when we studied the European Union's legal provisions and appreciated the importance at least initially of the open scheme also being the same in substance and nature as the 1995 scheme. We abandoned any notion of introducing changes to the pension scheme which of course can be introduced at some future date by way of amendment. One of the observations that we made as I said earlier to the United Kingdom Government is, what happens if when we equalise under the new scheme, the open scheme, some beneficiary of the closed scheme says discrimination. Why should my neighbour get a pension at 60 and I have to wait until 65? I made it clear that any entitlements acquired through challenge, through legal challenge, by pre-1969 Spanish pensions, any rights acquired by pre-1969 Spanish pensioners as a result of us equalising under the new scheme, any rights acquired by pre-1969 Spanish pensioners under the closed scheme as a result of our equalising under the open scheme would be for the account of the United Kingdom who have agreed to pay the pensions to the pre-1969 Spanish pensioners. But the way that that is likely to be avoided is this, that if we do not equalise and if we say we are going to equalise by the year 2020, well look, by the year 2020 there are no pensioners who have not already reached pensionable age under the closed scheme. There will be nobody, there comes a point which I think we calculated as being the year 2005, Opposition Members should not regard this as factual, but from memory I think it is the year 2005 when the last closed scheme pensioner will have reached pensionable age as presently defined. Provided we do not equalise before then there will be no one who will not himself have already reached pensionable age under the closed scheme and therefore will have nothing to complain about. That is the thinking to protect ourselves from pre-1969 Spaniards challenging in court on discriminatory

grounds the fact that people under the open scheme get a pension at perhaps 60 or 62, whatever it is that the equalisation provision is, 60 probably, but that they have to wait perhaps another year or two until they reach 65 under the closed scheme. It will be by delaying equalisation to a point where the last pensioner under the closed scheme has already reached pensionable age, 60 or 65, depending on whether he is a man or a woman, and then there will be nobody that will be prejudiced by the supposed discrimination. My hon Colleague the Minister for Social Affairs indicated in his address that it was presently the intention to equalise at 60. Of course, I think it is correct to comment that the Government have given absolutely no consideration whatsoever as a matter of policy to any issues relating to equalisation except that I do not conceive that we would equalise, save financial or technical imperative, but to the contrary, but certainly we do not conceive a policy of equalisation at the expense of women which is of course what the United Kingdom is doing. The United Kingdom is gradually raising the pensionable age of women above 60 by one month at a time, not by one year at a time, by one month at a time, until by the year 2020 they have equalised in effect by prejudicing the position of women. As I say, we have not made a policy decision on that matter yet but as a matter of principle at this stage, we do not anticipate that we will be following the example of the United Kingdom in that respect.

Question put. Agreed to.

HON H A CORBY:

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

Question put. Agreed to.

THE CRIMINAL OFFENCES (AMENDMENT) ORDINANCE 1997

HON ATTORNEY-GENERAL:

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

Question put. Agreed to.

HON ATTORNEY-GENERAL:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the reason for this Bill was highlighted in a recent case in the Magistrates' Court. The offence of interfering with potential witnesses and

jurors or in fact anyone else involved in the investigation of a case is committed by inferring by unlawful means such as bribery, threat or improper pressure. Under our existing law the only way to deal with this is by charging a potential defendant with the common law offence of attempting to pervert the course of justice and being a common law offence this would be tried in the Supreme Court. In the United Kingdom the offence was made a statutory offence in 1994 thereby allowing for such offences to be tried summarily. The object of this Bill is therefore to amend our existing legislation to convert the offence into a statutory offence and is in addition to and not in derogation of any offence existing as common law. I commend the Bill to the House.

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

HON J J BOSSANO:

Mr Speaker, if there is a need to bring this into specific legislation for the reasons that the hon and learned Attorney-General has given in order to protect those that are involved in carrying out their duties in the administration of justice from any possible pressure, to interfere with it, then obviously we are in favour. Presumably, such a need was found in 1994 in the UK when they brought it into the Criminal Justice and Public Order Act of 1994 and the provisions are, as far as we can tell, identical and almost word for word. I must say that looking at it, as a non-lawyer, it seemed to me to be a very wide way of defining the offence and I am surprised, that having checked, it is the same as in the UK. I am surprised that an offence could be so broadly described that in fact it can simply be based on assumptions, intentions and motivations without anything actually happening. Presumably there is a need to describe it in such a broad scheme but our only concern would be that somebody should be finding himself accused of something simply on what appears to be a lot of possible hypothetical circumstances and that is without greater difficulty in proving his innocence that somebody has in proving his guilt. Apart from that, of course, on the general principles of the Bill which is to protect those involved from any external and illegitimate pressure we are totally in favour.

HON ATTORNEY-GENERAL:

I just wanted to confirm that this is exactly on the same terms as the UK legislation.

Question put. Agreed to.

HON ATTORNEY-GENERAL:

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

Question put. Agreed to.

THE SUPPLEMENTARY APPROPRIATION (1996/97) ORDINANCE 1997

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

Question put. Agreed to.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to move that the Bill be now read a second time. This Bill deals with the sums to be appropriated in the current financial year. The Bill proposes the appropriation of a further £5,972,000 in the case of the Consolidated Fund and £1,337,000 in respect of the Improvement and Development Fund. Details of the requirements that have given rise to the need for these further appropriations are set out in the statement of supplementary Estimates previously tabled. Before giving way to the Chief Minister in accordance with established practice, I would like to make three brief points. First, the further appropriations we are seeking over and above the Supplementary funding head of £1 million provided for in the Estimates approved by this House are provisions based on the forecast outturn as established in January of this year. I would stress they are provisions and all the funds may not turn out to be required. Second, should all the £5.9 million of the further Consolidated Fund appropriations be required this will largely be offset by higher revenues than estimated and savings under some other Heads. As the year ends we forecast that the Consolidated Fund will retain a positive balance. Third, we forecast Improvement and Development Fund supplementary will result in a small overall increase in capital spending but not of the order of the further appropriation of £1.3 million being sought. This is largely due to offsetting reductions in spending in some Heads.

I commend the Bill to the House.

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

HON CHIEF MINISTER:

Mr Speaker, hon Members will recall that by the time that the election came in May 1996 the budget for the current financial year had already been laid in the House and that in effect what we did after the election was simply to pass the budget that had been prepared, I suspect in something of a rush, by the hon Members in early 1996 in order to comply with the need to lay before the House was dissolved in February and that in effect the budget, and therefore the Appropriation Bill, as passed by this House after the election, I think it was in early June, was that budget which had been prepared by the previous administration. The fact that we are here asking the House to authorise expenditure of an additional £5,972,000 under the Consolidated Fund and the sum of £1,337,000 under the Improvement and Development Fund, does not of course mean that the new Government has spent nearly £7 million which was not anticipated or not envisaged at the time of the last budget. The vast majority of these sums are monies in respect of which the expenditure is recurring and in respect of which the Estimates in the budget was simply inadequate. For example, Opposition Members wrote in their budget the figure of £80,000 estimated for legal fees in the knowledge that in the last several years the Government have never spent less than four or five times that amount in legal fees. What there was, was in effect, an under provision in the Estimates rather than new expenditure. What there has been is a continuation of the same level of expenditure but of course that continued level of expenditure is in excess of the amount budgeted and therefore there is a need to come to the House. The hon Members may be interested in my reminding them that in all previous years there has been in effect supplementary expenditure to meet recurrent expenditure although it has not always been necessary for the hon Members who used to do their accounting differently, to come to the House on a Supplementary Bill. For example, in the last financial year 1995/96 there was no Supplementary Bill but the Opposition Members in effect had supplementary funding to departmental expenditure from reallocations and subventions of £3.6 million by simply moving things around. So this of course will not be happening in future years because the way that the new Estimates will be struck, when they are laid before the House next month, will make it very clear that the need for this large amount of supplementary funding will disappear and in future years when there is supplementary funding called for, it will be for new expenditure not envisaged at the time of the budget. In other words, a genuine request to the House to come and authorise expenditure, monies for new expenditure, as opposed to simply a way of

remedying what was a mistake or an under-budgeting in the original Estimates.

Going through the items of Supplementary Expenditure, actually relatively little of it is by actual spending decision made by the Government or at least made by the new Government. Certainly, the £70,000 that we are spending additionally on additional supply teachers in the Education Department, that most certainly is new expenditure, because that is a policy decision of the new Government. The second item, electricity, hon Members know that this is a perennial item and that is because there is always uncertainty at budget time of what the fuel cost is going to be and there is always difference between what is budgeted for fuel purchased by the Electricity Generating Station and the actual cost incurred during the year when there may have been raises in the fuel cost. Hon Members will be surprised, as I was, by the sum of money under item 8, Justice and Law. The Government estimates that during the current financial year it will have spent £980,000, that is £20,000 less than a million, on legal fees. Of course, that is not just legal fees in litigation, although it includes civil litigation which the Government is involved, it also includes criminal cases which are put out to the private sector. Notably and most expensively there is one criminal and notorious case now before the Court, which is being prosecuted on behalf of the Crown by a Silk from the United Kingdom, which is consuming large sums of money and it includes not just therefore civil and criminal litigation but it includes also legislation drafting. Hon Members know that much of the directive transposition work, especially in the commercial area, financial services, telecommunications, are done by private draftsmen, not by the ELU and therefore this is expenditure which amounts up and the fourth category of course is commercial advice in particular commercial transactions, for example, GP Telecomms transactions. The Government having now seen the amount of money that is being spent in procuring legal services in the private sector will now consider changing the Government policy on this although of course this is not our policy, this is just a continuation of what has happened in previous years. Frankly, for those sums of money, the Government could much more cost effectively recruit additional legal capacity within the Government service or on contract or directly and have the facilities and services available to it. Of course, that will eliminate a lot of this but not all of this because it is never going to be possible for the Government to provide itself with the necessary breadth of expertise and experience especially in the commercial field and it would not be right for the Government to deprive itself of good advice when we are entering into

important commercial transactions for Gibraltar like satellite fields, or things of this sort. Certainly for the run of the mill drafting work and for the prosecution work, I see absolutely no need for the Government to be spending hundred and hundreds and hundreds of thousands of pounds a year when it may be possible, for a much smaller amount, for the Government to contract the services of perhaps senior counsel or if not senior counsel, senior/junior counsel who can supplement the prosecuting capacity of the Attorney-General's Chambers to the point where it will not be necessary to incur the much higher costs involved in having that done by the private sector. Of course, the other item there under subhead 81 the Vollen Weider expenses, £200,000. That is damages that were agreed to by the previous administration to the gentleman who is alleged, well more than alleged, I think the court found that the Letters of Request issued by the then Attorney-General in Gibraltar had been wrongly issued and although the court found that the Government was liable, the court did not establish the amount of the liability and hon Members will remember they entered into a negotiation with Mr Vollen Weider's lawyers in Gibraltar and agreed by way of settlement to pay him £200,000 in damages. The Government thought it appropriate that that should be distinguished from legal fees because those are not legal fees, those are damages incurred by the Government or by the Attorney-General of the day in the irregular issue of Letters of Request and the Government then settled the quantum of damages in that amount. I have to say, speaking merely for myself, although it is always easy to be wise after the event, if I had been in the hon Members' position at that time I would not have settled for this amount, I think that the court would have given much less by way of damages than £200,000 but still that was the judgement made at the time. The other item that I specifically want to draw to Members' attention, because it is new expenditure, in other words it is the spending decision that we have made is the item at the very bottom of the first page which is Head 32 Port, subhead 16 Shipping Registry, it shows there the sum of £85,000. Ten thousand pounds of those £85,000 is the cost of recruiting, through the Maritime Safety Agency, of recruiting the new maritime administrator which hon Members know is one of the bits of the jigsaw of the new Registry and the new shipping legislation. Of course, that is just by way of deposit. They say they will try to give us some of that back but such is the commercial climate affecting United Kingdom departments at present that they considered it necessary to have the £10,000 from the Government of Gibraltar in advance and did not think that we could be trusted apparently, simply to pay whatever was actually incurred. I have made that comment, it struck me as a little bit odd, but still, such is apparently the credit rating of

the Government in certain UK departments. The other £75,000 needs to be explained and that is this, hon Members know that we complained bitterly after the election, or just before, in November or December 1996, about the fact that just three or four days before polling day an agreement for the privatisation of the shipping registry for 20 years was signed. I think, from memory, on the 10th May, polling being on the 16th. The Opposition Members know that we think that that was something that should not have been done by a caretaker Government, still less by a caretaker Government six days before polling and that quite apart from that, as a matter of policy, this Government is against the privatisation of the shipping registry in particular. We have therefore come to an arrangement with the company in whose favour this 20 year privatisation agreement was signed whereby they have agreed to surrender the agreement back to the Government for exchange for a sum of money which is calculated to compensate them for the expenditure that they have already incurred in creating computer software, purchasing computer hardware, in instructing lawyers, in incurring legal expenditure in negotiating the contracts, in training management, in attending shipping conferences and things of that kind, so this £75,000 is the amount that the Government will pay to, I cannot now remember the name of the company, Maritime Ship Registry Limited or words to that effect, to surrender that contract back to the Government and this amount of money is compensation. The company will transfer to the Government the software that they have devised. They will transfer to the Government the hardware that they have purchased. They will assist the Government in passing on the management techniques and training that they had already prepared to whoever the Government nominates within the service to run the Registry. Therefore this sum is by way of compensation for expenditure already incurred which we thought it right to restore to them and also by way of purchase of software and hardware and training consultancy. In our view hon Members know from statements that we have made in the press that the amount of the share of fees and tonnage taxes that had been given away for a 20 year period in that agreement was excessive quite apart from the fact that we did not like the idea of the shipping registry being privatised at all but certainly privatised it had to be. Then the share of revenue in the form of tonnage taxes and registry fees given away to the operator for 20 years was excessive and the Government considers that £75,000 to recover that agreement for the Government and to acquire the equipment and the software, is £75,000 very well spent. Over the page under Head 17 Reallocations and Subventions, the hon Members will see up there the figure of £3.1 million. Hon Members, I am sure, at least the Leader of the Opposition, knows and

recognises, that does not mean that the Government has spent an additional £3.1 million in the ETB. It simply means that the arrangements for accounting within the ETB have hitherto been such that there has been practically no..... well, hon Members will see that there is a dash under Approved Estimates. This item of expenditure is the amount of Government monies that are paid by way of wage subsidies to trainees and others. Some of that money is retrieved then from the European Union but a larger part of it does not and what the ETB has been doing until now and since it was established was that it has been accounting for that money on an Advance Account basis. In other words, this House has never approved or had the opportunity to disapprove the amount of money that the ETB was spending on wage subsidies. We think that that is wrong. We think that it is a major and significant item of expenditure and that it should be brought within the Appropriation mechanism of the House. It certainly will be in the next year's budget and we thought that this Supplementary Bill was an appropriate opportunity to clean the slate historically and transfer from the Advance Account to the Consolidated Fund, in effect, the accumulated expenditure which has never been approved in a budgetary sense. The other item that I would like to highlight is Head 104 Support Services where hon Members will see that under subhead 7 Community Projects, the hon Members had written into their budget the sum of £900,000. This was the amount from which they paid sundry items some of it for small works but mainly invoices received from SOS 24 Limited for community project work that that company did and the payments for that came mainly out of the item Community Projects. The Government have since changed those arrangements, the arrangements between the Government and SOS 24 have now been discontinued and community project work is now done by a Government-owned company called Gibraltar Community Projects Limited. Those £900,000 will of course now be available, the budgeted £900,000 will be available to be injected into Gibraltar Community Projects to pay for the wages of the men there. But, whilst the SOS arrangement was up and running, invoices for work done was not the only element of Government subsidy to SOS. Government was also subsidising the labour by £81 a week wage subsidy. The revised estimate of £1.7 million by an additional £800,000 does not mean that we have increased the cost of the operation by £800,000, it simply means that a sum of money, although there has been some increase, because of course we have raised the wages, but what it means is that subsidies that were previously being channelled through the ETB to SOS as wage subsidies and not accounted for under the Consolidated Fund is now being accounted for under the Consolidated Fund because the Government now does not pay invoices to its own company. Gibraltar Community Projects has not yet began

and we may not go down that road but the company has not invoiced the Government for work done, the Government has simply defrayed the whole of its wage bill. So this £800,000 does not represent increased cost of the Community Projects operation, it simply is a rechannelling of expenditure that has always been incurred. In other words, before expenditure used to go via wage subsidy to the ETB and by payment of invoices for work done from the company. Now it all goes through this Community Project heads so obviously what we have done is we have retrieved from the ETB the element of wage subsidy and included it in this as the total cost of Community Projects to the Government. So, I just repeat that is not extra spending, it remains to be seen at the end of the year, when overtime has been calculated, although this will be budgeted for next year but of course it has not been budgeted for this year, when overtime to March 1997 in Gibraltar Community Projects has been calculated it remains to be seen whether the overall cost to the Government of the Community Projects exercise has risen or not.

HON J J BOSSANO:

We will be making some comments on the individual items when we come to the Committee Stage. As regards the general principles of the Bill, the Financial and Development Secretary indicated in fact that it would not alter the bottom line. As far as I can see, the only item which produces an automatic increase in revenue because it is an accounting devise, is the electricity head where the costs are charged to the expenditure side of the Estimates and to the special fund and then reflected in Revenue as reinvested, as far as I know.

HON CHIEF MINISTER:

I am sorry, did the hon Member say the only additional revenue source?

HON J J BOSSANO:

Generated by this expenditure, that is correct.

HON CHIEF MINISTER:

Yes, I do not think that that is the additional revenue to which the Financial Secretary was referring. I think what the Financial and Development Secretary was referring to was the fact that there had been additional revenue, for example, from income tax and that therefore the overall budgetary position remained in positive territory. In other words, that this additional, in inverted commas, because it is not all additional, this

expenditure over and above the budgeted amounts, whether they are additional expenditure or under-budgeted expenditure, it does not matter, is more than compensated by additional revenue in completely unrelated areas, for example, income tax, things of that sort.

HON J J BOSSANO:

So we can take it then, that the Estimates of Revenue independent of the consequential effect of the reinvestment arising out of extra expenditure on the electricity in fact based on the review that is normally carried out in January are expected to produce a forecast outturn higher than the £72 million in the original Estimate and that this is simply because of a higher level of collection in a number of areas?

HON CHIEF MINISTER:

Yes, indeed, there has been no review of the electricity fund in January of this year. We have not increased the electricity tariff or the fuel cost adjustment.

HON J J BOSSANO:

No, no, I am well aware. The point that I was making is, that under the system that you have got with the expenditure being shown as a head of expenditure and at the same time, the money being charged to the Special Fund and then reimbursed to the Consolidated Fund, the £390,000 of expenditure will appear in the forecast outturn vote as an expenditure and as a revenue item. So that is neutral?

HON CHIEF MINISTER:

Yes, indeed.

HON J J BOSSANO:

That is the only point I was making. I could see nothing else here that will have the effect of producing a higher revenue yield other than that and I take it that the explanation is that irrespective of the additional expenditure the higher revenue is there anyway. The Financial and Development Secretary also said that this was required over and above the amounts provided for reallocation in Head 17, but in fact, in the Statement of Reallocations that have been tabled so far in the House there is very little indication that we have gone anywhere near using the £1 million Supplementary Funding. We have got a number that have been tabled in this House and previous ones but we are talking about sums of four and five and six thousand pounds and therefore it seems

odd, given that we are so close to the end of the financial year, that we should have reallocated £1 million of which we have not had a statement tabled and yet need to increase supplementary funding. I know that the Financial Secretary said that in the supplementary funding that is being provided in particular heads not all of it may be spent by the 31st March and that of course in normal consequence of estimating bills that have to be paid and all they need to do is to arrive one day later and they fall into the next financial year but it seems to me that by the 17th March the Financial and Development Secretary ought to know whether he has reallocated close on to £900,000 from the £1 million or not and if he has reallocated £900,000, then against the context of what is additional expenditure in this supplementary it seems to me that more subheads have been increased than anything that is indicated here, given the fact that the big items have been explained by the Chief Minister as simply being not additional expenditure but expenditure now shown as coming out of the Consolidated Fund which previously did not come out of the Consolidated Fund.

As regards the financing of Community Projects by making payments from the Improvement and Development Fund to the new Government-owned company, I am not sure that the rules of the Improvement and Development Fund allow for what has been said. That is to say, from my recollection the Improvement and Development Fund has to be used for the payment of specific capital costs which have been invoiced. I do not think one can simply say I will give £1 million to a Government-owned company to pay their workers without any record of what is the work that they are engaged on from the Improvement and Development Fund, it can be done in some other way, but to my knowledge it cannot be done from the Improvement and Development Fund. The Improvement and Development Fund actually has to have the money that is spent identified for work that is done which is chargeable to the Fund. Obviously, if we are going to judge whether the way that community Projects are now being carried out is going to be more cost-effective or not, we will have to wait until that has been operating some time to be able to judge it but of course if there is no knowledge of what it is that they are actually doing then it is not possible to pass any kind of judgement at all. I think when we come to the Committee Stage we would like to have some indication of this £3.1 million of the ETB, how much of it in fact is paying for the support of those who are under training and how much of it is for the administration. In fact, if it is the clearance of the running expenses, are we talking about that being the estimated cost for this year or are we talking about the fact that they may have had costs coming into the financial year 1996/97 from

1995/96. The Employment and Training Board of course has in excess of £1 million, I think it is, coming in from the training levy so presumably this would be the difference between its revenue and its expenditure and not in fact the whole of the expenditure. That information, I imagine, can be obtained at the Committee Stage.

HON CHIEF MINISTER:

Mr Speaker, as the hon Member.....[Interruption]

MR SPEAKER:

The Chief Minister can speak.

HON CHIEF MINISTER:

Unless, of course, the Leader of the Opposition now wishes to resile from the long-standing tradition that he hopefully introduced in the House that on Appropriation Bill, the Budget, and this is a Supplementary Estimates Bill, the debate is basically between the elected members of the House. When the hon Member for the last eight years presented the Appropriation Bill otherwise known as the Budget, he has always replied without a right to reply technically because he is not the mover of the Bill, the mover of the Bill has always been the Financial and Development Secretary, and he gives way and the Chief Minister of the day presents the Appropriation Bill, the Opposition have their say and then the Chief Minister is treated as the mover. This is what has happened for the last eight years. I think it is an extremely good convention that the hon Member started and I have every intention of continuing it. I am surprised that he should now be taking a different line.

HON J J BOSSANO:

I want to clarify that if the Member cares to go back and look at the record, first of all I did not start it. It was started by the AACR before 1988 and, secondly, it has never been used, in my recollection, in the Supplementary Appropriation Bill and, thirdly, it is not an unwritten law but in fact I think there is a proviso that says that in moving the Estimates of Expenditure there is a statement made by the Financial and Development Secretary and then a statement made by the Chief Minister who then has the right of reply when everybody else has contributed to the Appropriation Bill. To my knowledge it has never happened before under a Supplementary Appropriation Bill.

HON CHIEF MINISTER:

Mr Speaker, as he noted it in principle between an Appropriation Bill and a Supplementary Appropriation Bill, this is in effect a little mini-Budget. This is an amendment to the Appropriation Bill that we passed in June. I see no case for drawing a distinction. At the end of the day the points that need to be made in reply are brief. The £1 million supplementary funding has almost all been used. The hon Members will recall that they wrote into their budget £1 million Supplementary Expenditure. Of that, £807,300 has been used on items that will eventually appear on a Statement of Reallocations by the Financial Secretary. There is a balance then available of £192,700 and of course one might ask, "Why did you not use those £192,700 before coming up now?" In other words, "Why did you not deduct the £192,700 from the £5.5 million that we are now asking for?". The answer is, that we can leave a sum of money available there for the remainder of the financial year and that the head does not expire. Running very quickly, the Leader of the Opposition will of course get the details but basically it breaks down again into Electricity £149,000; Fire Service £68,000; House of Assembly, that is to say the Election expenses, £55,000; Justice and Law, that is Supreme Court salaries and overtime etc £53,000; Police, but not salaries, general police expenditure £45,000; maintenance of prisoners £8,000; Secretariat £78,000; Support Services, mainly overtime, £186,000; Trade and Industry £15,000; Financial and Revenue collection £75,000 and Reallocations and Subventions £72,000. I do not know if the hon Member perhaps thought that the £1 million was substantially intact, the £1 million is not substantially intact, that has been absorbed and what we are now asking for is beyond the £1 million with the exception of the balance, as I say, of £192,700..... I will give way before I sit down, that remains from the £1 million. I will give way to the hon Member.

HON J J BOSSANO:

The point that I was making is in fact that we have got in this House statement of reallocations that have been approved so far and they did not indicate anywhere near that amount of money having already been reallocated and therefore I was surprised that having brought to this House a Statement of Reallocation which shows a very small part of the amount that is being reallocated, the supplementary funding was there, obviously we can expect a future statement giving the figures that have been given now.

HON CHIEF MINISTER:

On the point that the Leader of the Opposition made in relation to the Improvement and Development Fund, and Gibraltar Community Projects Limited, well, of course the work that the money is notionally paid, as against work done, all the work of Community Projects Limited is now specified by Government, it is monitored by Government and it is certified for the Government. The purpose of the new arrangement was not to make it cheaper necessarily. It may or may not turn out to be cheaper. Indeed, it may turn out to be more expensive but the new arrangement, in the Government's opinion, is more transparent. In other words, we can be sure that the cost, the overall cost to the Government, is really the labour cost and that we are not giving out unnecessarily large profit margins to owners of companies on invoiced work. It may or may not turn out to be more cost effective but cost effectiveness was not the initial objective. The initial objective was more transparency and more control over the costs that ultimately are borne out of taxpayers' money now as they were before.

Question put. Agreed to.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

Question put. Agreed to.

The House recessed at 12.40 pm.

The House resumed at 3.00 pm.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

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

1. THE CRIMINAL PROCEDURE (AMENDMENT) BILL 1997.

2. THE GIBRALTAR DEVELOPMENT CORPORATION (AMENDMENT) BILL 1997.

3. THE SOCIAL SECURITY (CLOSED LONG-TERM BENEFITS AND SCHEME)(AMENDMENT) BILL 1997.

4. THE CRIMINAL OFFENCES (AMENDMENT) BILL 1997.

5. THE SUPPLEMENTARY APPROPRIATION (1996/97) BILL 1997.

1. THE CRIMINAL PROCEDURE (AMENDMENT) BILL 1997.

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

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

2. THE GIBRALTAR DEVELOPMENT CORPORATION (AMENDMENT) BILL 1997

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

Clause 2

HON CHIEF MINISTER:

Mr Chairman, hon Members have a letter giving notice of amendments to this Bill. I should just say, rather than repeat the explanation on every occasion when there is a consequential amendment, that the principle behind the amendments are to establish common standards of auditing between the Consolidated Fund and the Gibraltar Development Corporation. The obligations and the rights and duties of the Principal Auditor in relation to the Consolidated Fund are established in the Public Finance (Control and Audit) Ordinance and whereas as it presently stands the Gibraltar Development Corporation imposes at Section 24 a list of criteria on the auditor, which it need not have been as it then stood, the Principal Auditor was a private firm of auditors, that has all been amended to simply use exactly the same words as is used in the Public Finance (Control and Audit) Ordinance in respect of the Consolidated Fund. In Section 24 of the Ordinance, as it presently stands, in sub-section 2 it says, "The accounts of the Corporation shall be audited by an auditor to be appointed annually by the Corporation with the approval of the Government". That will now read, "Will be audited by the Principal Auditor" and the amendment which I am now introducing is simply to add the words "and certified" before the word "audited". So it will read "the accounts of the Corporation..... to be audited and certified" which are the words used in the Public Finance (Control & Audit) Ordinance in respect of the Consolidated Fund. All these amendments, in this letter, Mr Chairman, are simply to make the audit standard and the duties and obligations of the Principal Auditor in relation to the accounts of the Gibraltar Development Corporation be exactly as they are under the Public Finance (Control & Audit) Ordinance in respect of the Consolidated Fund. Both will be audited by the same person with the same statutory duties and audit standards.

In sub-section 3 of section 24, by deleting the word "report" and sub-paragraph (a), (b), (c), (d) and (e) and inserting after the word "Corporation", "shall have such powers as set out in part 8 of the Public Finance (Control & Audit) Ordinance". Mr Chairman, it is the same point as I have just made. The letter hopefully recites what the new section will look like after the amendment and after the amendment the new clause will read, "The Principal Auditor shall with reference to the accounts of the Corporation have such powers as set out in part 8 of the Public Finance (Control & Audit) Ordinance". As I say that is the point that I have just explained so that there are equal audit standards for both funds.

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

Clause 3

HON CHIEF MINISTER:

Mr Chairman, I have given notice of amendment to section 25(2) by adding a dash after the word "Government" and a new sub-paragraph (a) with the words, "a copy of the Estimates of Income and Expenditure including capital expenditure no later than 1st day of January in each year" and by moving the words "such financial and statistical return as it may from time to time require". As section 25 now stands in the 1990 Development Corporation Ordinance, the Corporation has to yield to the Government a report dealing with (a) the activities and policy and financial position of the Corporation during that year; (b) a copy of the Corporation's accounts for that year audited in accordance with section 24(3) and then (2) the Corporation shall furnish to the Government such financial and statistical returns as it may from time to time be required. All the other amendments that I have just read out are consequential in a secretarial sense. The essence of the amendment is that the Corporation shall be required to submit an estimate to the Government given that the Corporation will be substantially funded from either the Improvement and Development Fund where that might be appropriate or otherwise from the Consolidated Fund. The Government, common with other Government public monies spending organs, wants the directors of the Gibraltar Development Corporation, which at present are Ministers but may not continue to be so, should submit to the Government estimates of income and expenditure and capital expenditure by the 1st January. This is very probable but a final decision has not been made. These estimates of the Gibraltar Development Corporation, once approved

by the Government, will be included in the Estimates of Revenue and Expenditure of the Consolidated Fund that we lay in this House for indicative purposes. It is a way of putting the financial information in the public domain and giving the hon Members the opportunity, when deciding whether they wish to support subventions to the Gibraltar Development Corporation on the Consolidated Fund, to know how the Gibraltar Development Corporation intends to spend this sum.

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

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

3. THE SOCIAL SECURITY (CLOSED LONG-TERM BENEFITS AND SCHEME) (AMENDMENT) BILL 1997

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

Clause 3

HON H A CORBY:

Mr Chairman, I propose to move the following amendments. Clause 3(8) of the Bill be deleted and replaced with the following sub-clause. In Section 13(1)(Special Provisions as to men), paragraph (c) is amended by removing from it the words, "if the following conditions are satisfied, that is to say" and realigning those words with the words at the beginning of sub-section (i) so as to make it clear that the conditions contained in (i), (ii) and (iii) apply to all (a), (b) and (c) in sub-section (1).

Once amended, section 13(1) will read as follows:

"13(1) Subject to the provisions of this Ordinance, a man who is over pensionable age shall be entitled to an old age pension by virtue of the insurance of his wife, being a wife:

(a) to whom he is married at the time when he attains that age; or

(b) in respect of whose death he was immediately before attaining that age entitled to widower's pension; or

(c) to whom he has married after attaining that age;

if the following conditions are satisfied, that is to say:

(i) either she is over pensionable age or she is dead; and

(ii) she satisfied the relevant contribution conditions; and

(iii) in a case where he has married the wife after he has attained pensionable age, such further conditions as may be prescribed."

HON CHIEF MINISTER:

If hon Members look at the Bill as it is published, on page 60 in clause (8) and (9), which is the area that we are, hon Members will see in quotes there what (c) already says in the Ordinance as we passed it and it says, "whom he has married after attaining that age", and then it adds the following words, it should not be part of (c), it should be a new paragraph, back to the margin, because it applies to (a), (b) and (c), that is all. so if we compare that to the layout in the letter to Members, the only effect of this amendment becomes immediately obvious. If hon Members look at the second half, or the top half rather of the second page of the amendment letter, they will see that the words, "if the following conditions are satisfied" that is to say, have been divorced from (c) where they had inadvertently been typed because the following conditions that is to say apply, conditions (1), (2) and (3) apply not just to (c) as would have been the meaning if those words had been attached but they also apply to (a) and (b). It is an entirely secretarial amendment and indeed hon Members may like to know that as amended, as set out in the letter of amendment, as it would read following the amendment, is exactly how it reads in the 1955 Ordinance. There are no words changed, all of this is caused by the need to move those eight words away from (c) to a place where it is clear that they relate to (a), (b) and (c) and not just to (c). It is exactly the same in relation to the subsequent amendment which is the same provision in the Ordinance applying to women rather than to men.

HON H A CORBY:

I also propose the following amendment, clause 3(9) of the Bill be deleted and replaced with the following sub-clause: "in section 14(1) (special provisions as to women), paragraph (c) is amended by removing from it the words "if the following conditions are satisfied, that is to say....." and realigning those same words with the words at the beginning of sub-section (i) so as to make

it clear that the conditions contained in (i), (ii) and (iii) apply to all of (a), (b) and (c) in sub-section (1).

Once amended section 14(1) will read as follows:-

"14(1) Subject to the provisions of this Ordinance, a woman who is over pensionable age shall be entitled to an old age pension by virtue of the insurance of her husband, being a husband:

(a) to whom she is married at the time when she attains that age; or

(b) in respect of whose death she was immediately before attaining that age entitled to widow's benefit; or

(c) whom she has married after attaining that age,

if the following conditions are satisfied, that is to say:-

(i) either he is over pensionable age or that he is dead; and

(ii) he satisfies the relevant contribution conditions; and

(iii) in a case where she has married the husband after she has attained pensionable age such further conditions as may be prescribed."

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

Clauses 4 and 5 were agreed to and stood part of the Bill.

Clause 6

HON H A CORBY:

In page 63, Section 6(1) delete the word "regulation" and insert "section".

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

Clause 7

HON H A CORBY:

Again, it says "regulation" and it should be "section" in page 64 7(1)

HON J J BOSSANO:

Is clause 7 amending the Schedule or do we have a separate section that says "the Schedule shall be amended"? Because we have got 7(1) and 7(2) and then it says "Schedule 1".

HON CHIEF MINISTER:

No, no, there is no schedule to the Social Security (Closed Long-Term Benefits)(Questions and Appeals) Regulations. Where it says "schedule" that is the continuation of the Bill and that is the schedule that is referred to in clause 4 of the Bill, if the hon Member will turn to page 61. Unfortunately, these Schedules were printed with mistakes in the headings, not with mistakes in the tables themselves. If he looks at sub-clause 4 on page 61 he will see in Schedule 1 to the Regulations the tables in parts 2, 3, 4 and 6 are replaced with the corresponding tables in part 1 of Schedule 1 to this Ordinance. So the Schedule that he has just referred to, on page 64, is the Schedule to this Ordinance and it is the new Schedule that will go in place of the schedules which are printed in the Closed Long-Term Benefits Regulations. The numbers in the actual tables themselves is not the problem. If the hon Member checks and compares the tables there on pages 64 and 65 with the pages in the Ordinance itself as legislated back in September, he will see that there is no difference in the amounts. The differences are in the top section where it says, "the weekly rate of benefit". It has been badly printed so that, for example, in that first table that appears in Part 2.....

HON J J BOSSANO:

Mr Chairman, that is exactly what we are trying to discover. If I look at the table on page 64 and I look at the table on page 829 of the Gibraltar Gazette Thursday 26th September, there is no difference in anything, in the letters or.....

HON CHIEF MINISTER:

If the hon Member remains seated for another six seconds, that is exactly the point that I am trying to explain. There is no difference in the numbers, but there is a lot of difference in the heading so that, for example, where in the green paper on page 64 it says "full weekly rates

of benefits payable", in the Bill as printed it says, "only full weekly rate of". Then there is a heading being missed out altogether where it says on page 829, "£2" and "£1.50", it should read and it does read in the green paper at page 64 there should be a new heading to the columns of figures there called "reduced weekly rate of benefits payable" and that has been excluded altogether from page 829. That is why I say that the tables themselves, that is to say, the numbers do not change. It is not that we have amended or that there was a mistake in the rates of benefit or in the weekly averages it is that the tables were not properly headed when they went to the House. For example, in that one that he has used as an example, the one on page 829, if he compares that to the table at page 64 which is the one that we seek to replace it with, he will see that the words "benefit payable" have been added under columns 2 and 3 and then underneath the figures "£2" and "£1.50" there is a new heading "reduced weekly rate of benefits payable" which is the heading for all the figures underneath it and all the errors in the tables are of that nature in all of them. In none of them, except in one, which I will point out later, is there any change to the content of the table, the numerical content of the table itself. We will come to the amendment in a moment, but the table in question, there is one table in which no figure is changed but one figure is removed and as I cannot now lay my hands on it I will raise the hon Member's attention to it when we come to it in the ordinary course of this meeting. The Ordinance as passed, if he turns to page 43, the third figure "£6.90" on the extreme right hand side will be removed when we come to it..... in fact the moment has passed, it was in (xv), in the previous clause that has already gone through but just whilst we are discussing tables, if he looks at page 61 of the Bill the last amendment to the Ordinance itself, to the Schedule of the Ordinance and in (xv) he will see that in part 1 of Schedule 1, the figure "£6.90" set out in the fourth column "Widow's Pension" is omitted. We have passed the page but that is the only alteration to the figures in any case.

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

Schedules 1 and 2 and the Long Title were agreed to and stood part of the Bill.

4. THE CRIMINAL OFFENCES (AMENDMENT) BILL 1997

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

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

5. THE SUPPLEMENTARY APPROPRIATION (1996/97) BILL 1997

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

Clause 2

Heads 2 to 10 were agreed to and stood part of the Bill.

Head 13

HON J J BOSSANO:

Mr Chairman, we do not agree with the provisions in 13(1)(a) which is the new post of private secretary. I think there are three considerations. First of all we question the need for this additional post. Secondly, in terms of the grading of the post, it is graded as a senior officer which is what is the grading of Heads of Department in other parts of the Government administration and that is based on analoguing. Of course, the individual happened to be in that grade because he had attended a promotion board for a vacancy of Postmaster. If one was using somebody with a particular grade retained on personal-to-holder capacity in occupying a post of a different grade, then that is always done to protect the individual. But, in fact, what we have is a new post equated to the equivalent of Accountant-General or Principal Auditor or Head of Customs and in arguing if there was a case for such a post and the content of the post was such that it justified that level of grading by comparison with the other equivalent Senior Officers throughout the service, then it is a post that should have been in its own right advertised. There might have been people who were not interested in applying when the vacancy was for Postmaster and who might be interested in applying for this particular vacancy. We have got three reasons why we do not agree with that. Of course, this has nothing to do with the individual who happens to be doing the job or with the fact that he is earning that money because he obtained the right to earn that money when he applied for the vacancy that existed. But for those reasons we do not support it and therefore we want to take a separate vote on that item because we will not vote in favour.

HON CHIEF MINISTER:

Mr Chairman, I should say that historically the office of Chief Minister has had attached to it many more senior officers than this. I am sure the hon Member can remember in the good old days the number of senior officers that there were attached to the Secretariat but in effect working for the Chief Minister. The hon Member

also knows that it is the policy of this Government to be aware of the difference between a Minister and an administrator and to put those differences into practice. For that reason it is necessary for this Government to have available to it additional amounts of administrative support, than the hon Members felt they needed, because of course they did most of the senior administration themselves. That is not the style of this Government and I should say that if he does not support the creation of this post of Private Secretary at this level on this occasion, he is unlikely, when we come to debate the Estimates for the forthcoming year, support either the additional posts that will be created at senior level, although not necessarily senior offices, in support of the Chief Minister and his office.

HON J J BOSSANO:

Obviously, Mr Chairman, we will reserve our judgement on that when we see what it is but at this point in time the judgement that we are making is on the information that we have got at this point in time.

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 T J Bristow

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

Head 13 stood part of the Bill.

Head 16

HON J J BOSSANO:

Mr Chairman, can I ask in subhead 1(4), are these studies and reports that have already taken place or are we asked to be making provision for something that is intended should happen?

HON P C MONTEGRIFFO:

Mr Chairman, if I understand the position, the figure relates to reports that fall into both categories. One of the reports is the Deloitte and Touche Report on the MOD rundown which has been completed and there is a possibility of further work by these consultants but there is no figure to take account of that possibility at this stage. The other major expense is the consultancy arrangement we have with Mr Richard Wells, that is effectively halfway through its tenure. There are then two other minor reports which are currently being worked through, one is in respect of urban renewal and one is in respect of captive insurance promotion where the first stage of the report has been completed. It is on the basis of that first report that the Government has made its announcement in respect of the efforts that are being made to promote that industry in the context of passporting.

Head 16 was agreed to.

Head 17.

HON J J BOSSANO:

I asked in the general principles whether it would be possible to give us some additional information on the £3.1 million. I do not know whether the information is now available?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I think it falls to me to answer that. Essentially, at the end of the last financial year, as I understand it, there was a deficit on the advance account that the ETB had with the Treasury which is the £0.5 million and that had come down from a balance from the year before, a positive balance of about £2.2 million. So the funds generally available to the ETB had been declining over the years and the £3.1 million represents the difference between the money they have expended this year plus the deficit from the end of the financial year and takes into account the money that we expect to receive in from the European Social Fund and so, the carry forward, if our forecasts are right into the next financial year, will be a zero balance. It will offset all the deficit funding of the ETB.

HON J J BOSSANO:

I also asked for confirmation, that in fact, I think it is implicit in the answer Mr Chairman that this is the

gap between the income of the ETB from the levy and the actual expenditure. Presumably the income that the ETB gets from the £2 weekly levy per employee it retains as its own funding and can expend and I take it therefore that this in fact reflects the shortfall between the income and the expenditure?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, that is correct but I perhaps should just clarify that in addition to the training levy there would also be the funds coming from the European Social Fund as part of the income as well.

Head 17 was agreed to.

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

Clause 3,

Heads 102 to 104 were agreed to.

Head 106

HON J J BOSSANO:

Can I ask, Mr Chairman, the explanation in the margin says "matching EU fund" on Objective 2 Projects. The figure of £3 million in the Estimates was of course a round figure on the expenditure side which included the matching EU funds on the revenue side. As I see it what we are doing here is voting that in the current financial year Objective 2 Projects will use up £75,000 more than the £3 million already provided in the Estimates. That would suggest therefore that the £3 million is already gone and I do not see how the matching EU funds enter in the equation because, of course, on the revenue side is where the matching EU funds appear in the Estimates and one would expect that something like £1.2 million of the £3 million would be matching EU funds?

HON CHIEF MINISTER:

That is not entirely right, Mr Chairman, because this Supplementary Bill is not as may have been the case in the past coming to the House after the event to seek for the approval of expenditure that has already been incurred. It is an attempt to correct the situation in advance of the requirement so that all of these Supplementary Estimates, both for the Consolidated Fund and for the Improvement and Development Fund, are forward projections to the end of the financial year. It is not true, for example, to say that the hon Member assumes that the fact that we are asking for £75,000 more means

that the £3 million that we had has already been spent. It does not mean that at all. It means that we think that until the 31st March there will have been spent £3,075,000. We presently only have authority for £3 million, we therefore want authority for an extra £75,000 but it may not be spent. In other words, it is not that the £3 million necessarily has already been spent. This is not a correction of the situation that has already happened. It is looking forward to the 31st March, which admittedly is only a fortnight away. There are road projects in progress, there are beautification projects in progress. I cannot tell you, in the absence of the Minister for Trade and Industry, exactly at what stage those projects are but the calculation is that the whole £3,075,000 will be required by way of appropriation authority by the 31st March.

HON J J BOSSANO:

I must say, Mr Chairman, that still implies that if there is a risk that the expenditure by the end of this month is going to be more than £3 million we must be very close to the £3 million already, since there is only two weeks left. The only explanation given is matching EU funds which is no explanation at all. Everything there has got matching EU funds. The EU is presumably contributing 45 per cent of the £3 million and will contribute 45 per cent of the £3,075,000 and if they had put £100,000 instead of the £75,000 it would have contributed..... the matching EU funds has nothing to do with it. It can only mean, from the explanation we have just been given that in fact the rate at which the £3 million is being spent, which was thought at the beginning of the year to be a figure unlikely to be used up, it must have accelerated to a stage where it is now thought to be unlikely to be sufficient.

HON CHIEF MINISTER:

Everything which the hon Member says on this occasion is logical.

HON J J BOSSANO:

We are not against Objective 2 Projects being spent, in fact it is a good thing to be able to spend the money since most Member States have a problem of underspending and then having to give money back. It is not something we want to encourage here.

HON J C PEREZ:

Mr Chairman, it also presupposes that the projects themselves which are to be paid or are being paid by

these funds are near completion given that they are at the stage where £3 million of work have been done already and that does not seem to be the case from the information that has already been made public on the Projects 2 by the Government in the press,

HON CHIEF MINISTER:

I will look through my papers to see if I can give the hon Members more explanations than I already have but the Opposition Members should not assume that this amount of money will be spent, indeed may not already have been spent because of course there will have been inter-departmental virement. If the hon Members are suggesting that they do not think that £3 million worth of capital projects expenditure may have been incurred from the beginning of the financial year to date, I think that they are probably not right. I am just, as I speak, trying to see if I can give them exact details of the expenditure in progress..... no, I do not have that information to hand, Mr Chairman, but they should assume that if the Department has put in the bid for the supplementary it is that they think that they are going to spend it and spend it in accordance with what the hon Opposition Member has said between now and the end of the financial year because he is entirely right, if the expenditure is not actually made this financial year it will fall into the next and it is no good to them to have it now. So this must be expenditure that the Department of Trade and Industry wishes to incur and pay for before the 31st March and certainly they have enough projects in hand to justify this expenditure but if they want details of which projects they are, we shall need notice of that question.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, could I just add a point in clarification to what the Chief Minister has just said. It may be helpful but although it is supplementary provision, if voted for, will give a total of £3,075,000. Of course there will be also the opportunity possibly of virement within that particular Head and so the actual outturn expenditure for Objective 2 Projects may in fact be even higher at the end of the year but as the Chief Minister said we will be happy to supply a list of the projects and the spending.

HON J J BOSSANO:

In fact, Mr Chairman, the original £3 million was as I said a round figure, and each specific utilisation of a part of that £3 million would require the authority of the Financial and Development Secretary to go ahead. I would have thought that if they need £75,000 between now

and the end of the year, given the fact that this is not a vote that Departments can simply spend because the monies provided at the beginning of the year they can simply start using it until it runs out, it could only mean that they are committed on a number of fronts to a degree that they expect to overrun the £3 million allocation. That is the only logical explanation that one can think of. It is just that it does not seem to be consistent with the reality of past experience of capital projects which more frequently tend to be delayed than advanced beyond their original projection date for obvious reasons. Things happen sometimes during the life of the project which are delaying factors and it is hardly ever anything happens during the life of a project that is an accelerating factor.

HON CHIEF MINISTER:

Mr Chairman, there are projects which we have wanted to start before the beginning of the financial year, particularly the beautification projects of Winston Churchill Avenue, Harbour Promenade, that is the new park in the west side reclamation area in Casemates, and that will be included in the £3 million now increased to £3,075,000 and then of course there is the question of the Main Street beautification which is now being wholly funded by Government and the European Union and no longer being funded by the traders in Main Street. So it is not necessarily that work has been accelerated but rather than expenditure is being absorbed in those £3 million which were not going to be absorbed in those £3 million before because private businessmen were going to be asked to contribute. But, as I say, if the hon Members wants the information of the projects which have been carried out through the year and which are in the process, as we speak, of incurring expenditure between now and the end of the financial year, then that information will certainly be provided to him.

HON J J BOSSANO:

I am grateful for the offer of additional information. Just for the record let me say that the explanation that has just been given cannot be in fact accurate because the cost of the project is shown 100 per cent on the expenditure side and if the business community contribute or do not contribute that appears on the revenue side of the equation. So if the cost of the Main Street project is £1 million and the businessmen do not contribute £0.5 million it does not make the project cost £1.5 million because it will still cost £1 million. It is just that on the revenue side of the estimates where we have receipts and it shows in the receipts payments that are contribution made in respect of commercial projects, then

that contribution is not there. The other thing is of course, I think that the Chief Minister has just said, that instead of it being funded by the Community and the businessmen and the Government, it is now only the Community and the Government. Well, from my recollection in fact the Community was not involved in the Main Street project. If it is indeed now part of the Objective 2 Project then that is a different position. Initially it was intended that it should be the business community and the European Union and when it looked as if it would not be accepted as an Objective 2 Project, the Government said they would pick up the part of the European Union. But if it is now in the Objective 2 Project, then I do not think that was there initially for the reasons that I have explained.

HON CHIEF MINISTER:

I am sure the hon Member has recently driven along Casemates Square and seen an enormous billboard there that says that this project is partly financed by the European Union.

HON P C MONTEGRIFFO:

Can I just add, further to the Chief Minister's point, which he made beforehand, and the Leader of the Opposition's answer, that as trustee of the Main Street Beautification Trust on behalf of the Government we have seen the expenditure of the project rising slightly. So while I do not have the information in front of me with regard to that particular head, the House should be aware that the expenditure of the project has been rising slightly in relation to various slight technical delays, matters in the archaeological works, and that may account for that slight virement.

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

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

THIRD READING

HON ATTORNEY-GENERAL:

I have the honour to report that the Criminal Procedure (Amendment) Bill 1997; the Gibraltar Development Corporation (Amendment) Bill, 1997; the Social Security (Closed Long-Term Benefits and Scheme)(Amendment) Bill, 1997; the Criminal Offences (Amendment) Bill, 1997; and the Supplementary Appropriation (1996/97) Bill, 1997, have been considered in Committee and agreed to with or without amendments and I now move that they be read a third time and passed.

Question put. Agreed to.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that this House do now adjourn to Tuesday 1st April 1997 at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 4.15 pm on Monday 17th March 1997.

TUESDAY 1ST APRIL, 1997

The House resumed at 10.05 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 T J Bristow - Financial and Development Secretary

OPPOSITION:

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

IN ATTENDANCE:

D J Reyes, Esq, ED - Clerk of the House of Assembly

MR SPEAKER:

The Leader of the Opposition has written to me asking me in effect to give a ruling from the Chair. I willingly comply, that is why I am here. The hon Leader of the Opposition submits that the procedure followed at the last meeting of the House in relation to the Supplementary Appropriation Bill was wrong and contrary to Standing Orders. With due respect I disagree with his views for the following reasons:

Under the Standing Orders there are rules governing ordinary Bills and rules for the Appropriation Bills. Standing Order 32A(2) and (3) speak of the annual Appropriation Bill. Everyone knows what appropriation means. The word "annual" in the Oxford Concise Dictionary is given as, "of, or belonging to, or reckoned by the year; yearly". It does not mean once a year in the present context. I have come to the conclusion that the Annual Appropriation Bill means the appropriation for the whole year and that the Supplementary Appropriation Bill is just part and parcel of the same yearly appropriation. It is really a Supplementary Annual Appropriation Bill. In the Standing Orders the word "Bill" is in the singular but under the rules of legal interpretation a singular sometimes includes the plural. I find and rule that the correct procedure was used at the last meeting of the House regardless of whether the same procedure had been used or not on previous occasions.

The Hon K Azopardi has given notice that he wishes to make a statement and I will now call on the Minister for the Environment and Health.

MINISTERIAL STATEMENT

HON K AZOPARDI:

Mr Speaker, the Government has since August 1996 through the Minister for the Environment and Health been discussing with the Defence Secondary Care Agency of the MOD issues surrounding the secondary care needs of the MOD in Gibraltar.

I have answered questions in this House on two occasions on this subject. In November 1996 I indicated that discussions were at a very preliminary stage. In February 1997 I mentioned that discussions had advanced somewhat but that I envisaged we were still some months from a final agreement if a common position was to be reached in due course.

The essence of the discussions that are taking place between the Government and the MOD concern the possible assimilation by the Gibraltar Health Authority of the secondary care requirements of the MOD.

Apart from the meetings that have been held at which I have been present, medical, nursing and managerial staff of the Gibraltar Health Authority have conducted technical discussions with their counterparts at RNH to discuss the feasibility of such assimilation.

Whilst no final agreement has been reached, the Government has agreed to treat MOD patients requiring secondary care for a nine-month trial period commencing on the 1st May 1997. I have personally briefed the Unions on this matter.

This trial period does not indicate that there will be final agreement, as any party may take the view at the conclusion of such a period, that it does not wish to continue such arrangements.

The Government is conscious of the need to protect the interests of the present employees of RNH and has obtained an assurance from MOD that no compulsory redundancies will be caused or arise from the nine month trial period. In fact the entering into of this understanding has enabled the withdrawal of redundancy notices to employees that would otherwise have been made redundant.

The basic terms of the trial period are that Government will be paid for the delivery of such services to MOD patients and that certain medical staff will be seconded by MOD to GHA to assist in the delivery of care. Additionally, the GHA will have the use of the RNH theatre. These interim arrangements will not detrimentally affect GHA parties or staff in any way. Indeed, the Government is confident that these interim arrangements are in the interests of the GHA and the community at large. Close monitoring of the trial period will take place via a liaison committee set up under the auspices of GHA and MOD.

It is emphasised that as no final agreement has been reached, negotiations will continue with MOD to evaluate this trial period and the possibility of entering into a more permanent arrangement on mutually acceptable terms. Until the outcome of these discussions become clearer it would be premature to expand on these. The purpose of this statement is to inform the House of the current position. Further statements will be made as and when appropriate.

MR SPEAKER:

Under the rules there is no debate but the Leader of the Opposition is perfectly entitled to ask questions and if the Minister wants to reply he can reply and that is the end of it.

HON J J BOSSANO:

Mr Speaker, can the Minister say whether the proposed cottage hospital facility is going to be proceeded with by the MOD during the course of this nine month trial period?

MR SPEAKER:

Are there any more questions?

HON J J BOSSANO:

Yes, Mr Speaker, I have some more questions.

MR SPEAKER:

More questions?

HON J J BOSSANO:

Yes, but I would like to get an answer.....

MR SPEAKER:

When the hon Minister replies, that is the end. It is not a questioning process.....

HON J J BOSSANO:

Mr Speaker, I accept your ruling but all I can tell you is that I am being guided by previous experience. I think the last time was in 1984 that there was a ministerial statement. Any Member of the House could ask any number of questions as long as they were to seek clarification of a statement that had been made.

MR SPEAKER:

No, only the Leader of the Opposition is entitled to ask questions and then the Minister replies to the questions and that is the end. So if you have got more than one question, I think you should have all the questions together.

HON J J BOSSANO:

Could I also ask the hon Minister to say, this staff that is going to be seconded, what are the numbers, the different grades of the staff and whether they continue to be paid by the MOD or by the GHA during the period of secondment? I would also like to ask whether the payment the MOD is going to be making to the Health Authority is going to be an agreed sum of money or on the basis of usage, that is, so much per patient whenever a patient makes use of them and whether there is any offsetting involved because of the use of the facilities in the RNH?

HON K AZOPARDI:

If I can take the questions in the order that the Leader of the Opposition has raised them. I understand that for the period of the trial period that they will not be proceeding with the cottage hospital project while that, of course, remains a factor in the long term negotiations. If there is no permanent arrangements, no doubt they will seek to proceed with it. The seconded staff, if I remember rightly, we are talking about five midwives, a theatre team, a consultant surgeon and an anaesthetist. The terms of the secondment are, that for the period that they are seconded to GHA, they will be under the day-to-day direction of whoever is in charge of a particular aspect of the facility, in other words, if there is a Sister in charge they will obviously come under the instructions of the Sister. For the period of the secondment they will continue to be paid by the MOD so there will be no extra expense to GHA. The cost formula that is being used is not on a patient usage basis. The cost formula that has been arrived at for the purposes of this trial period, is relating it to GPMS contributions. We have ascertained the heads of families, the nominal contributors, in accordance with the proportion of medical population that the MOD are talking about, we have multiplied that by the GPMS contributions as any other Gibraltarian would pay for that service. We are using the same equation to have them have access to the medical facilities as any other person, any other taxpayer in Gibraltar would use. There will be no offset as against that contribution of any other matter, any other use of any facility which is

being made available to us, such as the RNH theatre or indeed the cost of the salaries of the seconded staff will not be offset as against this GPMS contribution either.

MR SPEAKER:

There is another statement by the Minister of Trade and Industry of which late notice was given but I allowed him to make the statement, the same procedure is to be followed.

MINISTERIAL STATEMENT

HON P C MONTEGRIFFO:

I am grateful, Mr Speaker. Mr Speaker, as the House is aware the Government have been waiting for some months for the Ministry of Defence to announce detailed figures of the proposed job losses following the 1993 Review. I am able to confirm this morning that an announcement is being made today by the MOD. It is therefore appropriate that I should inform the House of the details of this announcement.

The House will recall that the 1993 Review indicated that the number of locally employed civilians, a total of 1,400 in July 1994, would have to be reduced by half, that is to 700, by the end of the century. This would cause 700 direct civilian job losses. The Deloitte and Touche Report completed last year further indicated the very serious knock-on effects that would be brought about by such a high level of job losses. In the period since coming into office and in particular following the completion of the Deloitte and Touche Report, the Government have been urging the Ministry of Defence to reduce the impact of cuts on civilian employment.

The figures announced today by the MOD will confirm that the projected civilian job losses will be significantly reduced to 300, 100 jobs already having gone through natural wastage since 1994. Of the remaining 1,000 civilian jobs, 350 posts will still be subject to competing for quality.

Whilst obviously regretting the fact that Gibraltar is to suffer major job losses as a result of the MOD rundown, the Government are encouraged by the significant reduction in numbers to be announced today by the MOD. This reduction has followed an in-depth analysis by the

MOD of its requirements and has involved close consultation with the Government and the Trade Unions. It is gratifying to note that the lower number of job losses has particularly been due to the great civilianisation and localisation of MOD posts.

Mr Speaker, in our discussions with the Ministry of Defence we have also consistently argued for an improved Early Retirement package. The Government have felt that this was particularly important in order to give options for early retirement for staff over 50. The Government therefore welcomes the news that a package is being finalised with the Unions to cover such early retirement during the period of the drawbacks.

Although the reduced job losses makes the MOD rundown more manageable for the Gibraltar economy, it does not change the general analysis made by the Government with regard to new economic activity. There continues to be a need to expand the private sector and thereby increase the prospects of employment. This involves continuing progress towards the service economy in tourism, financial services, telecommunications and port related facilities and the highest level of customer care.

The Government are, of course, aware that these reduced cuts will still cause considerable anxiety to many families in Gibraltar. We are hopeful, however, that a combination of voluntary redundancies and retirement will absorb most of the job losses over the next four years. The much lower job losses should be seized by everyone in Gibraltar as an opportunity. It is also a vote of confidence in Gibraltar and a testimony to the positive and constructive relationship that the Government, MOD and Unions have brought to bear in these discussions. It is very important that this constructive dialogue between Government, MOD and Unions should continue. In this respect a reactivation of the Joint Economic Forum is now appropriate. It is possible that there may be delay in arranging an early meeting due to the elections in the United Kingdom but subject thereto, the Government are keen to bring about an early meeting.

There are still difficult issues to tackle in the rundown process. The Government, however, feels that today's announcement and the success that has been achieved in significantly reducing civilian job losses augurs well for Gibraltar's prospects of successfully managing these reductions.

MR SPEAKER:

I am perfectly conscious that this is part of your motion on the adjournment, so you can either ask questions now

and continue with the motion or you can ask no questions now and raise it all in the motion or do whatever you like, but your motion is there.

HON J J BOSSANO:

Mr Speaker, the motion was directed at the immediate effect over the next twelve months in the financial year that starts today. I will deal with that side of it, which has not been specifically mentioned, when I come to the motion, because it is a follow-up to two questions in two previous meetings of the House specifically on 1997 and 1998. Can the Minister say, in relation to the information that he has provided today, whether in fact the retirement package is now finalised to the extent that before any redundancies are proceeded with there will be a troll of people to see how many volunteers there are or retirements given that as he himself has indicated in a statement, natural wastage and retirement may avoid the need for compulsory redundancies. If it is not yet finalised, can he confirm that in fact as I have suggested in previous questions in the House, it is logical for the MOD to determine first the retirements before they commence the redundancies? Since the greater the retirements the lesser the redundancies, it does not make sense to start the second leg unless there is a need for it because there are insufficient volunteers for the first and that therefore we can expect that the actual selection for redundancy will follow the retirements and not happen straightaway.

HON P C MONTEGRIFFO:

Mr Speaker, the retirement package is not yet entirely finalised. My understanding is that significant progress has been made in that direction but the Ministry of Defence and the Unions have not yet concluded their discussions on this matter. What the Leader of the Opposition states seems logical to the Government and the point that was raised in the same vein following an earlier question in the meeting, is one that the Government took on board but I cannot permit the MOD obviously or the Unions to acceptance of that formula. It seems logical to the Government that that procedure should be followed and we hope that progress towards finalising the retirement package will be swift and will be concluded in the very near future.

DOCUMENTS LAID

The Hon the Chief Minister moved under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the laying of various documents on the table.

Question put. Agreed to.

The Hon the Chief Minister laid on the table the accounts in respect of the year 1995 of the following companies.

1. Gibraltar Residential Property Company Limited.
2. Gibraltar European Investment Trust Limited.
3. Gibraltar Industrial Cleaners Limited.
4. Gibraltar Information Bureau Limited.
5. Brympton Co-Ownership Company Limited.
6. Westside One Co-Ownership Company Limited.
7. Westside Two Co-Ownership Company Limited.
8. Gibraltar Joinery and Building Services Limited.
9. Gibraltar Land (Holdings) Limited.
10. Gibraltar Commercial Property Company Limited.
11. RPLI Company Limited.
12. Venture Enterprise Capital Company Limited.
13. Gibraltar Investments (Holdings) Limited.

Ordered to lie.

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

(1) Statements of Consolidated Fund Reallocations approved by the Financial and Development Secretary (Nos. 7 to 9 of 1996/97).

(2) Statement of Improvement and Development Fund Reallocations approved by the Financial and Development Secretary (No. 2 of 1996/97).

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

SUSPENSION OF STANDING ORDERS

The Hon the Minister for the Environment and Health moved under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed to the First and Second Reading of various Bills.

Question put. Agreed to.

THE NATURE PROTECTION ORDINANCE (AMENDMENT) ORDINANCE 1997

HON K AZOPARDI:

I have the honour to move that a Bill for an Ordinance for the purpose of further transposing into the Law of Gibraltar Council Directive 92/43 EEC on the conservation of natural habitats and the wild fauna and flora 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. Mr Speaker, this is a short Bill and I will be quite brief. This Bill seeks to further transpose the Habitats Directive which was enacted into Gibraltar law back in 1995. I understand that the difficulty has arisen, that due to a typographical error, the relevant part of the Habitats Directive that provides for the protection of the Date Mussel was omitted from our regulations and accordingly this bill has been necessary to do that. Now that I am here I think perhaps I should give some background on the Date Mussel. I understand that this is a boring mussel, not boring in a psychological or emotional sense, but rather in a functional, physical sense, it tends to bore through its surrounding area. The hon Members in this House will be glad to know that this is not one of those mussels regularly found on plates at the Sea Wave Restaurant at Catalan Bay, so the transposition of this particular part of the Habitats Directive will not affect our diet. I commend the Bill to the House.

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

Question put. Agreed to.

HON K AZOPARDI:

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

Question put. Agreed to.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

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

1. The Nature Protection Ordinance (Amendment) Bill, 1997

2. The Social Security (Open Long-Term Benefits Scheme) Bill, 1997

1. THE NATURE PROTECTION ORDINANCE (AMENDMENT) BILL 1997

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

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

2. THE SOCIAL SECURITY (OPEN LONG-TERM BENEFITS SCHEME) BILL, 1997

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

Clause 3

HON J J BOSSANO:

Mr Chairman, I have given notice of a proposed amendment to clause 3(3) which provides for the equalisation of pensionable ages between males and females. Although the intention is to reduce the age of retirement for men to 60, in fact the clause does not say that. It is possible to comply with that clause by doing either and therefore since the intention is to reduce the age of men to the age of women, then I feel that it should be specifically stated and the words added, "by reducing to 60 years the age of men". I am also proposing an amendment to sub-clause 4, do you want me to proceed with that?

MR SPEAKER:

It would be better.

HON J J BOSSANO:

I propose the deletion of sub-clause (4) and the replacement of a new sub-clause which will read, "for the

purpose of sub-section (3) the equalisation date shall be the 1st January 1998, or by annual reductions of one year in the definition of "pensionable age" for men commencing on 1st January 1998, as determined by regulations". The view that we take is, that the whole point of the open scheme, is to enable new provisions to be made in the open scheme which could not be made in the closed scheme and could not be made in the 1955 Ordinance, for as long as that Ordinance and that fund was being used for the payment of the Spanish workers that stopped contributing in 1969 because that was the condition under which the UK was prepared to contribute the funds to meet that cost and therefore in the closed scheme there is no proviso for equalisation. The position of the Government when they introduced the closed scheme was that they were free to, as a matter of policy, bring in whatever changes they wanted to the open scheme, and that they were taking advice on this. Of course, when the open scheme was introduced in the second reading, it was said that the policy decision that had been taken was to continue with what was there in 1955 which is what is there in the closed scheme. We see no logic to having two separate funds, an open scheme fund and a closed scheme fund if they are exactly the same, we might as well have one. The whole point of having a different one is that in this different one we can reflect policy changes and we believe that the new fund can and should pay from the beginning of next year, which is the first opportunity that we have. It would have been possible to do it earlier if the UK had agreed to pay the Spanish pensions earlier or if the whole fund had been dissolved and distributed and replaced by a new scheme which was the original idea. But given the arguments that have been put in the second reading of the bill that the cost of £3 million by bringing in effectively the age from 60 to 65, which presumably involves something of the order of 1,000 male pensioners to be able to cost £3 million, of that figure, we are providing for the reduction in pensionable age to be phased in a year at a time which would then take five years and where the annual cost would not be £3 million, that would be the final cost in three years' time but effectively you would be talking about something like £0.75 million cost a year assuming the accuracy of the £3 million, which I imagine is an order of magnitude rather than an exact figure which has been worked out.

The need to wait till the year 2020 is not something that is clear because in the open scheme it has been the position throughout that since it is a replacement and therefore represents a clean break with the previous one, it is possible to proceed now as it is possible to proceed in the year 2000 and the year 2020. We in fact had a very clear indication from the British Government that their experts saw the new scheme as new and distinct

from the old and that in fact under Community law we were required to do this. But in any case we believe that even if it was not a requirement of Community law it is something that has been under consideration for ten years at least and which could not be proceeded with when there was a single scheme from which both present residents of Gibraltar who are working in Gibraltar or who are commuting to Gibraltar and those who stopped working in 1969 get paid. Therefore, obviously, our preference would be that it should be done on the 1st January but if the Government, when they have gone into greater detail as to the estimated costs of the resources of the fund, feel that it is too much to do it in one go then by regulation they would be free to introduce it in slower time. I think it is important that a start should be made for pensioners on the 1st January 1998 and we have suggested that date rather than doing it now so that the administrative procedures that would require the additional payments to additional numbers can be put in place with sufficient time to be able to do it. We would be talking, if it was done in a year, of less than 200 males in any one year being eligible because that is what the demographic structure indicates. I think it is also important that we should do it against the background where there are possibilities of people taking early retirement because the difference for those who take early retirement may be, that it is easier for them not to go back on to the labour market to seek employment if they are getting the Social Security pension at the age of 60 as opposed to the age of 65.

I commend the amendment to the House.

HON CHIEF MINISTER:

Mr Chairman, if the Government had wished to impose on itself the straitjacket of having to equalise pensionable ages by a given date, which is the effect of the Leader of the Opposition's amendment, then we would have so drafted the Bill. The Leader of the Opposition may think that pensionable ages in Gibraltar should be equalised by the year 1998. That is his view and he must know, or presumably knows, why he holds that view given that no Gibraltarian would benefit from it, given that the affected Gibraltarians are not suffering any financial penalty as a result of doing so and that the effect of doing so soon would simply be to entitle people who do not reside in Gibraltar, of various nationalities, to a pension earlier. I just do not understand what urgency the Leader of the Opposition attaches to the Gibraltar taxpayer funding pensions for non-residents of Gibraltar at an earlier age when Gibraltarians who would otherwise obtain benefits are not in any sense, for reasons that he well knows, putting any pressure on the Government to

take that step. I can therefore only assume that this is a wish on the part of the hon member to pursue the policy which he devised prior to the last election of seeking to say things which he thinks will strike a chord in a particular sector of this community but which actually in no sense furthers the interests of that sector nor is it in Gibraltar's financial interests to pursue it any more quickly than is strictly necessary. The hon Member says that he does not see the need to wait until the year 2020, and the Bill as drafted does not require the Government to wait until the year 2020, I do not know why he thinks it is the Government's intention necessarily to wait till the year 2020. The Bill says, "that for the purposes of sub-section (3) the equalisation date shall be determined by Regulation but shall in any event not fall later than 2020". Government are therefore free in accordance with policy decisions that it might at any given time make to introduce equalisation of age provisions at any time. Therefore it does not follow from the Bill as drafted that the Government will wait, still less, does it follow that it must wait until the year 2020.

The hon Leader of the Opposition started by saying that he saw no logic in having two schemes and then, with respect to him, he goes on to give one of the reasons why it is sensible to have two schemes. He must know that if there were not two schemes, if there was just one scheme, then when we did equalise and given that he is urging us to equalise by the year 1998, that if we did equalise by the year 1998 under one solitary scheme, the equalisation provisions would apply also to the pre-1969 Spanish pensioners who are beneficiaries under the closed scheme but not beneficiaries under the open scheme. Therefore if there was only one scheme and we equalised, pre-1969 Spanish pensioners would benefit from the age equalisation provisions, because as he must know, there are still pre-1969 Spanish pensioners who have not yet reached pensionable age and in respect of all those several thousand pre-1969 Spanish pensioners who have not yet reached pensionable age, if we equalised under a solitary scheme then they would be entitled to an advancement of their pension collection age. Mr Chairman, the Government therefore do not support the amendments. The Government are committed to the introduction of equalised pensionable ages in accordance with Gibraltar's Community obligations, so to do, but it will choose its pace for doing so in accordance with the Government's judgement of what is in Gibraltar's best financial interests just as every other legislature and Government in the European Community is doing. There is no Government that is rushing to equalise especially not in our case when it is not necessary to do so. I already explained to the hon Opposition Member why the Government

were anxious anyway not to introduce changes at this stage in the nature and extent of benefits and that is, that on the basis of the legal advice that we have, it does not necessarily coincide with the advice that others might have, but on the basis of the legal advice that we have, the issue of whether this is a new scheme falls to be decided not by whether it is introduced by new legislation but rather by whether it substantially changes what used to be there before in terms of benefits and entitlements. Therefore the Government for that reason as well are not minded to accept any amendment which has the effect of altering the structure of the Bill, which is not to say that at a later date, when the issue is no longer live, the Government may not introduce as future Houses of Assembly might introduce, any number of changes to the open scheme Ordinance. The hon Member has given notice to delete the reference, "by reducing to 60 years the age of men" in clause 3(3) of the Bill.

Mr Chairman, in the second reading of the Bill I said that it was the Government's present intention to equalise by lowering the pensionable age of men to 60 rather than by raising the pensionable age of women to 65 or any halfway house, which was the option being followed in other countries, in other words trying to meet them in the middle. The Government presently have no intention to do so but certainly I see no reason why this House should constrain the Government's freedom of policy manoeuvre before the Government have had an opportunity either to make a final policy decision or indeed before there is any need to do so. So, certainly the Government are not willing to enshrine in the laws of Gibraltar that it must equalise pensionable ages to 60. This is something that the Government will do at a time of its choosing in accordance with the policy decision that it then makes in the light of all the circumstances then prevailing. Certainly, the hon Member must be aware he is certainly free to move an amendment to legislation to give him an opportunity to argue what he thinks the law should be. But he must also understand, that the fact that the law does not say that, does not mean that that is not or will be in due course, when the Government introduces the equalisation proceedings. In other words, the Government are not willing to enshrine at this stage in the law the methodology which it will pursue in relation to age equalisation but of course that is something that will be debated in the House at the time that it comes to be implemented. The Government although it has the ability to make equalisation provisions by Regulation, the Government do not envisage introducing those changes without some sort of prior debate in the House.

Mr Chairman, the Leader of the Opposition also suggested that..... well really it is the same point Mr Chairman the bit about that equalisation should be by annual reductions. I do not know if he is aware but annual reductions would be very difficult to operate. He may know that in countries where they do operate a gradual convergent system, these are not annual reductions, they are done by monthly reductions. In the United Kingdom this process has already began and they are not done by annual reductions of one year as the hon Member suggests in his amendment, they are done by monthly reductions so that every month a new category of woman is one month closer to retirement age, or rather one month further away from retirement age in the case of the United Kingdom. It would not in any case be done by annual reductions of one year. I recognise that the hon Leader of the Opposition's amendments are calculated either to force the hand of the Government in something that the Government have already indicated is its present intention in which case the Government does not think it is appropriate that it should be so restricted by law in its freedom of policy manoeuvre, or alternatively, it is simply an opportunity for the hon Member to express his views as to when he thinks age equalisation should take place, presumably in an attempt to strike a chord. There is no need to the hon Member to occupy this ground. The Government are fully committed to the principle of equalisation. It will be done in a way which best protects the interests of future Gibraltarian pensioners. It will not be done in a way that makes any prospective Gibraltarian pensioner worse off than he would otherwise be. That is the Government's policy. That policy will not change but of course the Government wishes to remain free as to the mechanics and the timing that it chooses to implement those policy commitments. The Government will not be supporting the hon Leader of the Opposition's amendments.

HON J J BOSSANO:

Obviously, Mr Chairman, we are disappointed that the Government's reaction should be what it is and let me say that the arguments that have been used are not very convincing. The point that I made about the open long term benefits scheme, which we are bringing into effect today is, what is the use of having it there unless you are going to bring in changes? The Chief Minister says, "I myself have given the reason why we should have a second scheme". Yes, the reason that I have given is reflected in the amendment that I have moved but if we are not going to change anything and we are going to have an identical scheme then the very logic of having a second scheme is absent. So I was not saying I do not

know why we have an open scheme and then saying myself why we have it. What I was saying was, in the absence of any changes there is no logic but there is a possibility of changes and in fact we were told last September when the closed scheme was moved that the Government's intention was to bring in changes in the open scheme. It is all very well to say, "We cannot bind a future Government by putting in the years to 60." Well, that contradicts every single argument the Chief Minister has used on every other piece of legislation here where he has said, "It is a nonsense to say we are binding anybody because there is nothing to stop an amending Bill being brought in and changing it." So if we put there now by equalising in sub-section (3) the age for men, what it would reflect is that the commitment to do that is present in this House today. That does not mean that somebody cannot, in a future meeting of the House, change that Bill and remove it. The point is, that we are reflecting in what we are legislating what is the express policy objective. If in fact a decision has not yet been taken and it could equally be that it is equalised in between 60 and 65 or in some other way and that the decision will be taken when it is decided to qualify, then in fact, why in the second reading of the Bill was such emphasis placed on the fact that it would be regressive to increase the age for women and that it was progressive to bring it down? Well, if it is progressive and we all think it is progressive then let us reflect what this House thinks should happen when this House is legislating. It is up to another House to do something different and that is an argument that was used by the Chief Minister when he was explaining that when the UK wanted certain things reflected in the law he had said to them, "Well look, whether it is reflected or not reflected, they used that same argument in relation to the provision in the closed scheme for the Minister to alter benefits when it is a fact that the Minister may alter the benefits". It does not mean that he has to alter the benefits and there is nothing to stop a future Government doing something different and we accept that, so we are not saying the idea of putting it there means that we are tying the hands of anybody in the future. All that we are saying is that we are reflecting in the amendment what is the policy to which we all apparently subscribe. When it comes to equalising next year, obviously the purpose of moving the amendment is to try and persuade the Government that it can afford to do it now because the reason that was used in the second reading of the Bill was that the cost was too high and certainly if the cost is too high and that is the reason why in the judgement of the Government it cannot be done in one go, then by spreading it over a five year period the cost is not too high because the additional cost every year is only one fifth of £3 million. Nor do I

understand what the Chief Minister says about having to pay to people who are not in Gibraltar. We are talking about people who are not already pensioners and we are talking about if it was done in stages that people who reach the age of 64 in whatever month of the year, I do not know how they calculate the pensions in the United Kingdom, but I would have thought the Chief Minister must know that what he is legislating here is that the year counts for calculating the average irrespective of the month of the year in which the person is born. That is provided for in this Ordinance. So you count the average number of contributions from the 1st January 1955 or your twentieth birthday but you count the year in which you were 20 and the year in which you are 65 irrespective of whether you are born in January or in December. That is the provision.....

HON CHIEF MINISTER:

Would the hon Member give way? Is he not aware that that is simply not the case. He must be aware that that is simply not the case. If one advances pensionable age for people who are not presently in receipt of a pension, one is advancing the moment from which one needs to fund the commitment and start making the payment and increase the period of time during which the payments have to be made. He may wish to give the example by reference to people who are 64 and therefore cloud the issue by reference to the year of the birthday but there are many, many hundreds of pre-1969 Spanish pensioners who are not even 60, let alone 64, and he is suggesting that in respect of them we should advance pension entitlement by two, three, four, up to five years. Can he give a reason why he should want the Gibraltar taxpayer to foot that bill? For what benefit?

HON J J BOSSANO:

Mr Chairman, in the light of that remark, for which I am grateful, I have to say we are not discussing the open scheme and everything that has been said about the open scheme until now is complete nonsense because none of the Spanish pensioners get paid from this. The whole objective has been that in the closed scheme there is no change and no provision for change and no provision for equalisation and that the new scheme is new precisely to enable us to do and that is not just what I have said, this is what the Chief Minister has said last September and since September and today. If his argument is that we cannot do it in the open scheme because whatever we do in the open scheme will apply to pre-1969 Spanish pensioners, then it is not an open scheme. The two schemes are closed and then why have two? The whole

purpose of having two is to enable us to do things here which have no impact on people that have not completed it post-1969. If this Bill does not do that then it fails to achieve the reason why it was created in the first instance. In fact, if we look at the Bill 90 per cent of the clauses in this Bill are identical to the ones in the closed scheme. If one is going to have two identical pieces of legislation, 100 per cent the same, I do not understand why it is we need to legislate for a second scheme. I know the arguments that are used and those arguments are that the Government are free to do it any time. Well, if the Government are free to do it at any time then it does not have a problem of having to pay all the pre-1969 pensioners in the closed fund otherwise it is not free to do it at any time. Then let us be told it has nothing to do with the additional cost for local pensioners because the £3 million that was mentioned, I can only decipher that figure as being the cost of something of the order of 1,000 new pensioners and since it is a move of five years, that translates into an average of 200 new pensioners a year and of course.....

HON CHIEF MINISTER:

Would the hon Member give way? It is clear to me from what he is now saying that I inadvertently said pre-1969 Spanish pensioners. No, I did not mean pre-1969, I mean Spanish pensioners and indeed other non-Gibraltarian resident pensioners.

HON J J BOSSANO:

So if we are talking about persons who are in Gibraltar, who are working over the age of 60, then in fact it is in the context of the difficulty of finding employment beyond 60 that bringing the age down makes sense. In most countries in Europe where most of their schemes are constantly on the verge of bankruptcy because they are all under-funded, the problem of moving to 60 was a problem of how to finance it but on grounds of generating opportunities for employment and on grounds of progressive policies that equalised age, all the social and political arguments were in favour of bringing down the age of males. In all the countries it had been overruled by the Treasury who said, "We cannot afford it." It is clear that we are in the fortunate position that we can afford it. We can afford it now, we can afford it spread over five years and we can afford it any time between now and the year 2020 and of course in the numbers of the £3 million figure that was given by the Minister for Social Affairs must be included all the nationalities currently working in Gibraltar who are between the ages of 60 and 65. I do not know how many non-Gibraltarians there are in that category but I would

imagine that the percentage of the population of 60 to 65 is predominantly Gibraltarian and that you are unlikely to be getting foreign workers unless they have here a very long time in an area age group. It is not a bad thing given the problem that we have for redundant Moroccan workers if in fact the ability to get the pension at 60 means that they are less likely to be here competing in the jobs market. There are sound reasons for doing it and there are no reasons for not doing it and in respect of introducing the commitment to bring down the age, this is not a matter of methodology. The methodology is how you do it. The policy is whether you do it and what we are saying is the policy should be reflected in the law because that is what we are legislating at this moment in time. A reflection of the policy decision to bring down the age of males at 60 and although we have a number covered by Community Care Limited, in the 60 to 65 age range employed on a part-time basis and getting a social wage, that was something that was put in precisely because no amendment could be done to the 1955 scheme, otherwise the joint memorandum with the United Kingdom would be breached by any attempt to change that because of the cost to them. It seems to me it is an opportunity to start putting into effect something that has been there under consideration for the last ten years and that this opportunity should not be missed. I regret we have not been able to persuade the Government to move down this direction but I must say the reasons that have been given sound hollow to us.

Question put. The House voted.

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

For the Noes: 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 T J Bristow

The amendments were defeated.

Clause 3 stood part of the Bill.

Clauses 4 to 9 were agreed to and stood part of the Bill.

Clause 10

HON CHIEF MINISTER:

Mr Chairman, I have given notice of an amendment to Clause 10. In clause 10(3)(a) it says, "That there shall be charged upon the Fund the payment of the benefits described in section 11 below." The hon Members will recall that in the closed scheme there appeared there the words, about which we debated somewhat at the time that we passed that legislation, that went on to say, "the payment of the benefits described in section 11 below....." and then it went on to say, "and notwithstanding the provisions of section 5 of the European Communities Ordinance, claims for such benefits payable by reason of Gibraltar's obligations under the regulations of the Council of the European Communities on the application of Social Security schemes to employed persons and their families moving within the Community". The hon Opposition Members will recall that at that time they argued that those words should not be included, as indeed they had excluded it, I think it was in 1991 or 1992 from some amendment to the Pensions Bill because they argued that the inclusion of the words there suggested that if included, this would imply that by the use of section 5 of the European Communities Ordinance, that these were liabilities of Gibraltar and therefore through section 5 a charge on the Consolidated Fund. The Opposition Members felt strongly that this was not something that they were willing to support because in their political judgement obligations to pay in effect pre-1969 Spanish pensions was not an EU obligation of Gibraltar because they took the view that this was an obligation of the United Kingdom because of the way that the then Foreign Secretary Sir Geoffrey Howe had mishandled the pensions issue back in 1985. Hon Members will also recall that we argued during the second reading debate on the closed scheme, that whilst we agreed that Britain had a moral commitment to pick up the Spanish pensions bill because the liability had arisen entirely as a result of either the United Kingdom's Government negligence and/or reticence in the handling of the issue, that that did not go on to mean that it was not a Gibraltar legal obligation because Gibraltar legal obligations under Community laws were established by Community laws and not by the act or omissions of the United Kingdom or Gibraltar. Our judgement, our analysis of the position was somewhat different. It was and is clearly under European Union law a Gibraltar obligation but a Gibraltar obligation which Gibraltar was refusing to discharge arguing, and with this part of the argument

we certainly agreed, that Britain should pay the bill because it had brought the problem down to bear on us. So we disagreed in the case of the closed fund about whether the words should or should not be included to protect Gibraltar's argument on which we actually agree. I think, Mr Chairman, that it would not be controversial between the two sides of the House that this point really only arose in relation to the closed scheme and does not arise in relation to the open scheme because it was only in relation to the closed scheme that we were arguing that it was Britain's obligation and not Gibraltar's. Therefore, because the point simply does not arise under the open scheme, we just made no reference to it at all and we just put, "all contributions paid under this Ordinance".

The passage, as the hon Member knows, of this Bill is a requirement for the European Commission closing a file or a fiche as they call them over there, in relation to infraction proceedings which are imminent. For that reason this draft Bill has been cited by the Commission in order to obtain from them an indication that it would result in the closing of the fiche. The Commission has made two points, neither of which, in our opinion, has any merit whatsoever. One we cannot address because it simply misses a point which is important for us and for the operation of the scheme and I shall explain that in a moment. But they did alight until what they have done is, that they have compared the text of the closed scheme with the open scheme that arrived at this section and they have said, "Oh, why have they excluded the reference to European Communities Ordinance and European Union obligations?" "Is Gibraltar arguing that by excluding the words 'including claims for such benefits payable by reason of Gibraltar's obligations under the Regulation', is Gibraltar denying the principle that European Union Regulations have supremacy and direct application in Gibraltar?". Which is of course a nonsense. That was not the reason why it was there in the first place, it was not the reason why it was excluded and rather than explain to the Commission, first of all, the reasons why it was excluded then the reasons why it was included and then the reasons why it was again excluded from this, all of which would simply be laundering our linen in a place where it does not need to be laundered, Government have decided to placate the Commission by quite academic, because it has absolutely no value or significance, meaning, or effect to restore in 10(2)(a) the words that were excluded. So that 10(2)(a) will then read in the open scheme, exactly as the equivalent section raised in the closed scheme and we trust that this will assist the Commission in arriving at the conclusion that we are not here trying to argue that European Union law is not supreme, nor are we seeking to gain some underhand

advantage by this. It is entirely academic and is frankly easier to concede it than to argue it because it is certainly in Gibraltar's interest that the fiche should be closed for reasons that Opposition Members will be able to work out for themselves. So for that reason, Mr Chairman, the amendment is that we delete the semi-colon after the words "section 11 below" and substitute a comma followed by the words "notwithstanding the provisions of section 5 of the European Communities Ordinance, claims for such benefits payable by reason of Gibraltar's obligations under the Regulations of the Council of the European Communities on the application of Social Security schemes to employed persons and their families moving within the Community". This will allow some official at the European Commission, that simply compares the two schemes as if that were a relevant exercise for him to conclude, that there is no difference and therefore will simply accept that the new scheme is in full compliance to Gibraltar's Community obligations and that will be the end of the matter. I hasten to add that in Government's judgement, in this Ordinance, the point is entirely academic even though in the closed scheme there was a political argument for excluding it in respect of which we differed from the hon Members.

HON J J BOSSANO:

Mr Chairman, we will support the amendment because in fact as the Chief Minister has correctly stated, the objections that we raised to its inclusion in the closed scheme should not apply in the open scheme since the open scheme has to finance any liability arising out of the application of Regulation 1408 and of course, to my knowledge, the only effect that has is in terms of passing the test of eligibility when you count periods of employment in other Member States. Other than that there is no connection between our legislation in the open scheme or in any other normal scheme that is not beset by the kind of problem we inherited in 1985. In fact, removing the provisions of Section 5 of the European Communities Ordinance is a good thing, not a bad thing and I would have thought it was a bad thing from the Commission's point of view but if they want it, then there is no reason why we should not want it and therefore we welcome the fact that it is going to be put in in this one although we did not want it in the other one.

HON CHIEF MINISTER:

I did indicate that I would give the hon Members an indication of the other point raised by the Commission which I felt we could not address and that was that somebody in the Commission, I do not know if the hon

Members have got the Bill in front of them, but if they look at section 19 of the Bill, the hon Members will recognise that under the heading "Special Provisions to Men", it provides in effect for men getting a pension by virtue of their wives contributions and that section 20 has the identical effect in relation to women. In other words, working women getting pensions, or women who have not worked, it could be both actually, getting pensions by reference to their contributions of their working husbands. The Commission looked at those two sections and because there are, one section deals with special provisions as to men and another section deals with special provisions as to women, notwithstanding the fact that the sections are otherwise identical, the sections in their provisions are absolutely identical. They concluded, quite irrationally in my opinion, from the fact that the provision is contained in two separate sections, one headed Special Provisions as to Men and the other Special Provisions as to Women, that there was some discrimination between men and women and of course that is not so. The only reason why the section laboriously sets out identical provisions in separate sections relating to men and women is because the phrase, "pensionable age", is used frequently in both sections and the phrase "pensionable age" means something different in the case of men than what it does in the case of women. In the case of women it means 60 and in the case of men it means 65. The Commission's suggestion was that this section should be merged into one and the word "spouse" used. I am not saying that it is not possible to sit down and do it but it is extremely complicated because every time one uses the word "spouse" one would then have to go on to say, "but in the case where the spouse is a man, pensionable age means 65 and in the case where the spouse is a woman, it means 60". This is exactly the reason why these sections are split into two so that they can just use the words "pensionable age" which is defined at the beginning of the Bill and always has been as meaning one thing for women and another thing for men. The Commission thought that this was discriminatory either of men or of women. We have put up a paper to them which makes it clear that in this respect there is no discrimination except that discrimination which is implicit in the fact that there are unequal pensionable ages, and that raises the whole question of the equalisation of pensionable age. That is the one Commission comment that we have not accommodated.

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

Clause 11

HON J J BOSSANO:

Mr Chairman, in the second reading of the Bill I raised the question of the reduced benefits table in the Schedule and why there was a need in the open benefits scheme to provide for proportional allocation of a pension of 60p a week to the new scheme for people with less than two years contributions or residence since 1970. Since the scheme started on the 1st January 1994 I could not understand why it was that we were saying that we were making provision for people who have contributed post-January 1994 on the basis that they had not been in Gibraltar since 1970 or insured since 1970. We did not in fact get an answer to that point at the second reading and therefore I am now moving the deletion of this provision by deleting in clause 11(2) the words, "except in the circumstances set out in sub section (3)" and then going on to delete sub clauses (3) and (4) which are the ones that provide for the higher rates of benefit to people who lived since 1970 and who reserved the frozen 1969 benefits for those who have not contributed or been resident in Gibraltar since 1970. There is an additional argument I think which needs to be taken into account. When the decision was taken in 1970 to increase benefits a decision was also taken to increase contributions. It seems to me that if somebody contributes in Gibraltar for 103 weeks post-January 1994 and has not got contributions post-1970 he is faced with the situation where he will be contributing or on his behalf the employer would be contributing £500 a year in order to get a share of 60p a week. That seems wrong because historically it was there because people paid £38 in 15 years and the actuarial relationship between the one shilling and five pence and the 60p was that that was what they were funding. Subsequently to that the increased benefits were linked to increased rates of contributions at different points in time. This is why we have two tables. We have a table that says people who contributed pre-1968, people who contributed post-1969 and people who contributed post-1970. The logic is that there was essentially a second contribution condition introduced so that the benefit would be payable to the people who had paid the same number of contributions but more expensive contributions. In the 1994 open scheme the only people that would be entitled to a share of their pension from the new scheme are the people that have contributed to the new scheme. We have, for example, at the back on page 118 where it talks about contribution conditions for the old age pension that it should be not less than 156 contributions. If we are talking about the contributions having all to be post-1994 then in fact it would not have been until 1997 that it was possible to have 156 contributions because that is fifty two weeks a year, three years. In this case the possibility of somebody

falling in the category of not having had enough contributions or residence to qualify for the £47.80 and having to get a share of the 60p is unlikely to be very numerous. There may be a dozen people in that category but it is in my judgement and in the judgement of this side of the House something that has been put in simply following what is clear has been one of the ingredients in the drafting of this which is to produce here what there is in the closed scheme and what was there in 1955 and I think not enough attention has been given to the fact that if the person was getting the 60p from the old closed scheme the 60p would mean because he had not been here since 1970. If he had been here post-1994 then I think, however few contributions had been made between 1994 and his retirement age, he should get in return for those contributions a share of the £47.80 and not of the 60p. Frankly, to make insurance compulsory and then to have a qualifying condition which means that some people have to contribute whether they like it or not and effectively they are contributing to a pension of 60p a week where they could do much better if they put the money in Government bonds and drew tax free interest from it and it is..... given that we are not given an explanation on the second reading of the Bill and having given the matter more thought, in between, we have come to the conclusion that all the pensions from the open scheme should be based on the £47.80 and that the cost of giving it to people who would otherwise be excluded by this would be very small and that in any case since in order to come under this scheme and in order to work out their average there must be post-1994 contributions, if they had not paid anything post-1994, they are not here at all. Their average would be simply based on the old contributions and they would be paid a 100 per cent from the old scheme. There would be no apportionment between the two schemes, if there is not any stamps paid under here. On the higher level of contributions now as compared to 1969 it seems reasonable that people who are having contributions made now are doing it on the assumption if they did not read the small print that they are actually paying towards the current rate of pension and not what was frozen in 1969.

HON CHIEF MINISTER:

Mr Chairman, the reason why this remains here, and there is much logic to the views expressed by the hon the Leader of the Opposition, are twofold. One remains valid even though the hon Members may not agree to and the other probably does not. The first reason which in our judgement does remain valid is our desire that there should be, as he has just said, that this should replicate the old scheme but certainly the issue to which the hon Member has just alluded in argument is one that

could certainly be reconsidered the next time or in some future occasion when the issue of changes to the scheme have already been saved.

In other words, he is right that the drafting philosophy of this Bill is to change nothing that does not positively need to be changed in order to strengthen the argument that this is not a new scheme in order to avoid the need to have immediate equalisation. He is absolutely right, that is the reason and that is one of the reasons why this is still there. The other reason why this is still there which in any case may not work, is this: it is actually not true to say that there is no connection between this Ordinance, this Bill, and pre-1969 Spanish workers. The Government understand that the European Union rules on aggregation requires the Gibraltar part share of the pension payable, for example, if somebody worked in Gibraltar before 1969 has left Gibraltar and has never been back, has then gone on to work in any number of other European Union countries, hon Members understand the rules of aggregation enables that person to add together all the pension contributions from all the EU countries in which he has worked and by stint of the aggregation rules get an entitlement to which each country in which he has worked then contribute their pro rata share. The European Union rules are that the Gibraltar share of that, even if it pre-dated 1969, have to be paid in accordance with the current Social Security scheme. It is not a question of saying, "Fine you worked in Gibraltar for three years, prior to 1970, you have got three years worth of Gibraltar contributions to aggregate, how much would you have been entitled to under the 1955 Ordinance or the closed scheme?" No, the way it has been explained to us is that European Union rules require that the Gibraltar proportionate share of such aggregated pension entitlement would have to be paid under the current scheme and the same applies in other countries. If there is somebody with an historical contribution in France, France's proportionate share would have to be paid in accordance with its currency and at the current rates. This is there partially to try and keep up and open the argument that the Gibraltar entitlement is limited by those provisions but we are advised that if that probably does not work, that if there is any pre-1969 Spaniard who left Gibraltar and has never been back but can contribute to the Gibraltar contributions to some European Union wide aggregation: then we would probably have to pay him a pension in respect of our contributions pro rate entitlement at the current Gibraltar rate of pension. The second reason, why that is there, probably will not work but the first one is the one upon which in any event would have caused the Government to leave it there but I hear the force of the argument that the hon Member has deployed and

therefore the Government will certainly keep this under review and on the next occasion that there is a need to amend this Bill after the question of the equalisation matter has been saved so that there is no longer an argument of about immediate equalisation then the Government will consider introducing amendments to reflect the points made by the hon the Leader of the Opposition.

HON J J BOSSANO:

Mr Chairman, all the arguments used are used really on the basis that the open scheme should not look like a new scheme, should look like the old scheme and therefore if the reason for doing that is to protect us from possible claims on this Fund, it does not make any sense at all because that is precisely what we have protected ourselves by having two Funds. The question of aggregation of course and the fact that people that have been in other Member States claim the higher rate of benefit is something that happened with the closed scheme not with this one. Yes, I am afraid so, Mr Chairman. If a Spaniard, to use the example given by the Chief Minister, left here in 1969 and has never been back the reason why he is able to claim a pension under the old scheme is because although he will not have been 104 weeks after 1970 paying contributions, he will have been ordinarily resident in Gibraltar since 1970 because under Community law residence in La Linea is the same as residence in Gibraltar. That it is 3(a), the equivalent of 3(a) in the 1955 Ordinance which was not amended in time prior to 1986 which triggered the whole mechanism of having to pay the pensions. We have been through that in this House many, many, many times explaining that that is where the redundant mechanism is but the point is of course that the view that has been put just now about people being entitled to the higher rate of benefit which they are in the closed scheme, it is not that the closed scheme only pays 60p, the closed scheme pays 60p to people who have not been in Gibraltar since 1972 which is 104 weeks after the 2nd July 1970, so anybody that has not been in Gibraltar in the period from July 1970 to July 1972 or in 104 weeks since that date does not get £47.80 irrespective of the value of his contributions. The Spaniards get the £47.80 in the closed scheme and so will any other Community national that contributed up to December 1993. Anybody that has contributed till December 1993 and can meet the rules of aggregating contributions over periods of time by reference to their contributions or residence in other Member States, are entitled. This, effectively, means that if somebody spends 103 weeks in Gibraltar and the rest of the time outside the Community then and only then would he fail to meet the residence conditions. If the argument is that

we want this to look like the other one so that it looks as if we do not have two but we have one, I have no counter argument to that one, except why not have one. Obviously, I welcome the fact that they are prepared to look at it but if they are going to wait until the year 2020 I do not think there are many people who contributed pre-1969 who have been away from Gibraltar who may have come back for less than 104 weeks and are still going to be alive to collect a pension of £47.80 if we are talking about some time in the next century.

Question put. The House voted.

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

For the Noes: 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 T J Bristow

The amendments were defeated.

Clause 11 stood part of the Bill.

HON J J BOSSANO:

Could I ask, in clause 11 the reference, I mean if the answer is because it was there in 1955, then of course we know the answer. But if it is not, what is the logic of saying in clause 11(5)(b)(1) that the contribution year which counts, is when the contributor has attained the age of 20 or the 1st January whichever is later.

It is effectively that only people who were born in 1935 would have been 20 in 1955 and therefore all those people with later birth dates under this clause have their contributions counted from their twentieth birthday although they are contributing before 20. How can they be contributing into a pension fund and those contributions do not count?

HON CHIEF MINISTER:

Mr Chairman, the hon Member knows that the calculation of entitlements to the rate of benefit under this new scheme takes into account pre-1994 contribution records for the purposes of calculating the weekly average. We discussed this at some length at the second reading. Entitlements to benefits under this open scheme are not limited to the weekly average as calculated in respect only of post-1st January 1994 contributions. For the purposes of calculating the weekly average there is an aggregation of the contributions paid pre-1st January 1994 and then there is a pro rata payment under the new scheme. The hon Member will remember that we debated that on the occasion of the second reading. As far as I am concerned that will be the only justification for that reference there. If the hon Member wants a more considered opinion then he will have to give me notice of that question. Certainly the fact that a reference to yearly averages of such contributions shall be a reference to that average calculated in the prescribed manner over the period and then that period begins with the period which commences also the closed scheme is correct, only in so far as that method of calculation of the average is transposed into the open scheme where your rate of benefit is also calculated taking into account contributions payable under the 1955 Ordinance/closed scheme.

Before I sit, Mr Chairman, I noticed in the hon Member's letter dealing with these amendments that he had hoped to delete sub-paragraph (4) which I suppose is a mistake on his part, is it?

HON J J BOSSANO:

Sub-paragraph (4) is the loss of the right to a higher pension by people who, that is to say, one will not go back to 60p if one leaves Gibraltar but since I was deleting entitlement to the 60p there was no need to say they would not go back to it if they left Gibraltar because they would not be getting 60p in the first place, that is what sub-clause (4) does.

HON CHIEF MINISTER:

So it is consequential to the previous amendment?

HON J J BOSSANO:

Absolutely, yes.

HON CHIEF MINISTER:

It is just that we did not debate it.

HON J J BOSSANO:

But it only follows if there is no (3) and one is not going to be giving people 60p then there is no need to say one will revert to the 60p because they cannot because it was not there in the first place. As regards the explanation the Chief Minister has given, I am aware that in order to pay pensions a system has been introduced and that is covered by the clause that talks about the transitional provisions and the calculation being apportioned as between the two parts. The point I am making is that, as I read this, anybody entering our workforce and having contributions made on the 1st January 1994 and subsequently will not have those contributions counted until his twentieth birthday because it says, "you work out the average beginning with the contribution year in which he attained the age of 20 or the 1st January 1995." That may also be true in the closed scheme for what happened pre-1993 which was following what was done in 1955. I do not know why in 1955 the start of working life was supposed to be at 20. To my knowledge people started working even earlier in 1955 than they do now but nevertheless this does not just apply to people who are getting it in the past, it also applies to people who are entering insurance in Gibraltar for the first time post-1994. As I read it, unless there is another explanation, it means that when the time comes to establish their entitlement to benefits it is the stamps that have been paid from the 1st January of the year in which they had their 20th birthday that counts because there is a proviso that says that in calculating the contribution you start with the contribution in the year before.....

HON CHIEF MINISTER:

I thought you were homing in on the 1st January 1995 aspect of the matter. If the hon Member is saying that in respect of people who have perhaps not yet started working, 15 or 16 year olds, or people who have just started working, that in effect the first two years of their contributions, on the assumption that they have made no contributions, that they have not started working until this year so they are not in the closed scheme at all, that such people who will get their pension entirely from the open scheme because they did not start work until after the 1st January 1995 they will also in effect not get the benefit of their contributions, during their 18th and 19th working years as has always been the case with the pensions scheme, that is absolutely true. That rule that your contributions do not start to count and except in respect of your contributions of the 20th year even though the law requires them to pay during their

earlier years that they might work, remains absolutely the case. But, Mr Chairman, whilst I have the floor, can I just say that I think that the Leader of the Opposition may wish to withdraw, for the Hansard, his proposed amendment to sub-section (4), which I think means something quite different to what he intended it to mean. Sub-section (4) which he sought to delete says, "any person who is at the date of entitlement to benefit entitled to the rate specified in sub-section 2(a) shall not lose such right by reason of ceasing to reside in Gibraltar". That means, that whatever pension one is entitled to under 2(a), one does not lose simply because one migrates away from Gibraltar. But 2(a), and this is where I think he has misguidedly directed himself, 2(a) is not the frozen pensions, 2(a) is the principal pensions, because section 2(a) reads, "subject to the provisions of this Ordinance except in the circumstances set out in sub-section (3) the weekly rate of the several descriptions of benefit shall be as set out in the second column of part 1 of Schedule 2. Those are the standard rates of pensions collectable by everybody. The effect of this amendment, if it had been carried, which it has not, would be, for example, that Gibraltarians would loose their entitlement to collect their pension because they collect under section 2(a) if they ceased to reside in Gibraltar. Moroccans would lose their pensions if they ceased to reside in Gibraltar. That was not the intention, I am sure, of the hon Member in moving the amendment and to the extent that he has linked (4) only to sub-section (3) which is the one that he has sought to amend, I think that he has misread (4).

HON J J BOSSANO:

Mr Chairman, I am well aware that the pension to which sub-clause (4) refers is the prevalued pension of £47.80. But it seems to me that the only reason why one has to put clause (4) is because clause (3) says that one does not get a revalued pension if one is not resident in Gibraltar and what clause (4) is saying is, "if you have been resident in Gibraltar first you do not subsequently loose it by not being resident". But, of course, my amendment removes the residence qualification altogether in (3). It seems clear that (4) is to claw back the £47.80 so that the trigger mechanism in (3) would only apply prior to claiming the pension, not post being granted. It has always worked like that on the basis that if somebody left Gibraltar in 1969, there are people, we have people in Australia and Canada who are getting 60p a week and they made the claim from there, then they got 60p, but if they were in Gibraltar, had been in Gibraltar for 104 weeks and they made the claim here, they got £47.80. Then there was this proviso which really clarifies the situation saying, "if you then go to Canada

having already been granted £47.80 you do not go back to 60p, you only go back to 60p if you started off with 60p and you did not start off with the £47.80". Certainly, the intention was not to deprive people of the £47.80. As far as we were concerned it was consequential on the fact that nobody would be getting 60p so one could not very well say to somebody, "you will retain the £47.80 if you go" because the qualification on residence would have disappeared altogether had the Government accepted the deletion of sub-clause (3).

Clauses 12 to 30 were agreed to and stood part of the Bill.

Clause 31

HON H CORBY:

Mr Chairman, an amendment to page 102, I would like to amend clause 31 with the substitution of the figure "32" by the figure and letter "31A".

HON CHIEF MINISTER:

Mr Chairman, it is entirely secretarial. Previously, when the Bill was being drafted a new section 31A had been introduced which is the one about being able to pay the fees of any doctor and then in 31B, it refers to section 32, regulations may provide for the payment of such fees as may be specified in the regulations to medical practitioners appointed under section 32 but are not appointed under section 32, they are appointed under section 31A so it just simply that the section that enables the rules to be made refers to the right section number. There is no substantive amendment at all. It is entirely secretarial.

Clause 31, as amended, was agreed to and stood part of the Bill.

Clauses 32 to 48 were agreed to and stood part of the Bill.

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

HON ATTORNEY-GENERAL:

I have the honour to report that the Nature Protection Ordinance (Amendment) Bill, 1997 and the Social Security (Open Long-Term Benefits Scheme) Bill, 1997 have been considered in Committee and agreed to with or without amendments and I now move that they be read a third time and passed.

The Bills were read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

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

Question proposed.

MR SPEAKER:

A notice of motion was given by the Leader of the Opposition and will now be debated.

HON J J BOSSANO:

Mr Speaker, the statement that has been made earlier on the lessened impact of the MOD cuts between now and the end of the century is of course welcome news. The reasons for my bringing the matter to the House in the adjournment was because in the last question we were told that the Government expected by no later than the 31st March to have been given the detailed breakdown of what was in the pipeline by the MOD. Obviously, it is better to have a forward projection over a number of years of what the reductions are likely to be. Even if those projections may change nearer the dates, but certainly when we are talking about the year 1997/98 which starts today, by now there should not be any need for further refinement of the figures or else this year there should not be any reductions. The MOD cannot possibly expect to start telling people that they are going to finish work tomorrow and for there to be alternatives for those people the day after tomorrow and the whole purpose of the advance consultation period which is in fact a requirement in any collective redundancy situation is to find ways of mitigating or avoiding the redundancies. That consultation has been going on between the MOD and the workforce in a global sense but if in fact a final decision has not yet been taken on the early retirement option then it must follow that, and I think we have got to keep on insisting with the MOD that they have to accept the inevitable logic of that, that the collective redundancy situation cannot precede a decision on retirement. Therefore given that we are already starting in this current financial year the numbers involved in the current financial year will certainly not be anywhere like the ones in the Touche Ross Report which was quoted by the Government in November last year and which of course was based presumably on information provided to them by the MOD as

to the direct effect. Let me say that the methodology of Touche Ross in projecting indirect and induced effects of the MOD redundancy seems to me a throwback to the exercise that was done in 1984 with the closure of the Royal Naval Dockyard. But, of course, now we have empirical data, we do not have to base ourselves on theoretical knowledge because we know how many people have lost their jobs since 1994, the figure was given that there were 1,400 in July 1994 and therefore if the loss of one job in the MOD triggered off the loss of half a job in the private sector we would be able to go back and test whether this is in fact what has happened. I do not think the indications are that this is what has happened. I am concentrating on the direct effect which is in fact the one that we can scientifically measure because it seems to me the indirect effect is based on a lot of assumptions about the multiplier effect of expenditure in the economy which were difficult enough to calculate in 1984 with a closed frontier and which do not have the same meaning whatsoever with an open frontier and I think they are using the same ratios as were being used in 1984. What I would welcome is an indication from the Minister with responsibility in this area in respect of 1997/98 as opposed to the wider picture between now and the year 2000 which he reflected in the statement at the opening of today's meeting, in respect of the current year, are we talking about people being made redundant? How soon within the year, within a matter of weeks or months? Or is it something that is not going to happen until September because people have to be given six months notice? Does he now have from the MOD a figure which will be relatively accurate, it may change by one or two, but it will be relatively accurate at this late stage in the proceeding of what is the total number of the job losses in the current financial year? Can he confirm in fact that the assumptions in the Touche Ross Report that MOD spending would be going down from £55 million to £45 million are incorrect and that we are not losing £10 million of MOD spending in this current year. Can he confirm whether the question of skills, ages, sex and nationality as the components of the demographic structure of the persons most likely to become redundant in this coming twelve months have been provided and if they have not been provided how soon has he been promised that information by the MOD. It seems to me that whether he reactivates the Joint Economic Forum or not, unless there are up to date and accurate figures, sufficiently detailed to say we are losing 300 jobs between now and December 1999, is not sufficient information to be able to plan an alternative.

The purpose of the motion I am bringing is to give the Government an opportunity to share with us, and the public, that additional information if he has got it and

if he has not got it, to send a message back to the MOD that they really are acting in a very irresponsible fashion if they are not providing that information, with that degree of accuracy and within the time limits which are required if we are looking at what was projected by Touche Ross for 1997/98 and what is likely to happen and the projection, let us not forget, was 560 jobs lost this year and £10 million of income not there any more.

HON P C MONTEGRIFFO:

Mr Speaker, I think I can partly satisfy the hon Leader of the Opposition's requests and there are other matters on which the Government are not currently informed. First with regard to the timing of the figures, it had been the Government's preference and this House well knows to have these figures known much earlier. Indeed, we were promised at one stage, it was indicated to us at one stage, that the figures would be available by the end of last year or at least some time in January but it become evident, Mr Speaker, that the MOD's delay was not, in the Government's view, sinister but rather part of a genuine reassessment of MOD requirements and what it took to actually get them serviced in Gibraltar. I think there has been a real assessment of what it takes to produce those services that the MOD still regards as important in Gibraltar. Once the figures were clear then there was further delays in the publication of the figures due to the elections in the UK because of rules governing the issue of press releases during a general election, releases that are not supposed to put the Government in the UK in a particularly favourable or disfavourable light. Special clearance had to be sought from London before the figures could be announced and the earliest possible and convenient time would in fact have been just before the Easter break, there was a possibility of this going to the public on Thursday evening which I thought was frankly a nonsense or this very morning straight after the Easter break.

With regard to the projections, Mr Speaker, I can give the Leader of the Opposition some comfort. A letter has been sent today to every civilian employee of the MOD and that letter does set out details, specifically, of the job losses over the next year, 1997/98, and then over the years 1998 to 2001. I will repeat these in the House now for the benefit of Members. It is proposed by the MOD to introduce job losses of 35 in this year with regard to non-industrials and 75 in respect of industrials, thereby making a total of 110 redundancies or job losses in the course of 1997/98. The balance of 179 jobs, which is in fact the balance indicated in the tables attached to the employee's letters, the balance of a 179 jobs breaks down into 66 further non-industrial jobs in the years 1998 to

2001 and 113 in the case of industrials. The actual total, Members will note, is actually 289 jobs rather than the round figure of 300 jobs which I have quoted for convenience's sake earlier. The letter to employees, which no doubt hon Members will have a chance to get a copy of, also sets down a breakdown of the grades and the areas in which each of these losses will fall. It is fairly accurate information, it does not identify persons but it does identify areas and it does identify grades. With regard to the Deloitte and Touche clearly many of the assumptions upon which that Report was based are now inaccurate. I personally take the view, although the Government has not yet so formally decided, that there is a good case for reassessment to be undertaken by Deloitte or other consultants, of the impact as is therefore likely to occur bearing in mind the figures as currently available. This is particularly so in my view, not just with regard to the economic impact, the indirect consequences that the hon Member has indicated, but specifically in the area of training by knowing now the type of people, the grades of people affected. I think the area of training which is pivotal to incentivising these employees into new jobs can be looked at with great focus and can be designed to match precisely the sort of skills which they have and which the economy is going to be needing. I cannot confirm the expenditure figures. The MOD has not made available to us the extent to which their spending in the economy will be reduced and at what stage and in what areas. It is important information which we will be seeking to extract and certainly, in the context of spending generally, the information they have put to us in the way they have argued these cuts is that they have tried to make savings in areas other than direct employment, partly as I said before through civilianisation and localisation of posts, but also through rationalisation of the way certain activities are undertaken. I think by centralising more of their activities in the Naval Base, and thereby effectively cutting expenditure, but not expenditure on direct employment on civilians.

Question put on the adjournment. Agreed to.

The adjournment of the House sine die was taken at 12.10pm on Tuesday 1st April 1997.