

GIBRALTAR

HOUSE OF ASSEMBLY



HANSARD

18TH DECEMBER, 1997

(adj to 19 January, 1998)

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Ninth Meeting of the First Session of the Eighth House of Assembly held in the House of Assembly Chamber on Thursday 18th December, 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 and Transport
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 R R Rhoda - 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

PRAYER

Mr Speaker recited the prayer.

CONFIRMATION OF MINUTES

The Minutes of the Meeting held on the 3rd October, 1997, having been circulated to all hon Members were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

The Hon the Minister for Trade and Industry laid on the table the following document:

Financial Services (Collective Investment Schemes) (Amendment) Regulations 1997 - Legal Notice No. 123 of 1997.

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 2 and 3 of 1997/98).

(2) Statement of Improvement and Development Fund Reallocations approved by the Financial and Development Secretary (No. 2 of 1997/98).

Ordered to lie.

ANSWERS TO QUESTIONS

The House recessed at 12.20 pm.

The House resumed at 12.30 pm.

Answers to Questions continued.

The House recessed at 1.15 pm.

The House resumed at 3.00 pm.

Answers to Questions continued.

The House recessed at 5.10 pm.

The House resumed at 5.30 pm.

Answers to Questions continued.

The House recessed at 8.05 pm.

FRIDAY 19TH DECEMBER 1997

The House resumed at 10.00 am.

MOTIONS

HON CHIEF MINISTER:

Mr Speaker, I beg to move the motion of which I have given notice which reads:

"This House resolves that the Social Security (Open Long-Term Benefits Scheme) (Amendment of Contributions) Order 1997 be approved."

Mr Speaker, in accordance with section 46 of the Social Security (Open Long-Term Benefits Scheme) Ordinance, any order made by the Minister for Social Affairs amending the rates of contributions has to be approved by resolution of the House of Assembly. The motion being moved seeks approval for an Order, that is the Social Security (Open Long-Term Benefits Scheme) (Amendment of Contributions) Order 1997, to increase the weekly rate of contributions payable to the Open Long-Term Benefits Fund as follows: By the employer from £10 a week to £11 a week, that is an increase of £1. By the employee from nil, as the contributions are presently distributed, to £1 making a total increase of £2.

These increases, Mr Speaker, are necessary in order to meet the increasing cost of paying local pensions. It should be noted that the Closed Scheme Fund from which all pre-1994 pensions are paid receives no direct income from contributions. Furthermore, the weekly contribution to the Open Long-Term Benefits Fund, previously the Preoccupational Pensions Levy Fund, have remained at the same rate, that is £10 since the 1st January 1994. In fact, £10 per week was the weekly rate payable to the Social Insurance Pension Fund from 1992 until the Fund was dissolved at the end of 1993. At the time both the employer and the employee each paid £5. It is estimated that the annual cost of paying combined local pensions from both the closed and the open schemes will be in the region of £9.5 million a year. The increased rates of contributions will produce an income of £6.5 million and the return on investment, if reinvested at a higher rate of interest, an additional £1.2 million. It is worthy of pointing out that at present the balance of the Pension Fund is invested with the Gibraltar Savings Bank at rates of interest, as hon Members must know, which are considerably below what could be obtained by that Fund elsewhere. In a sense that is another form of siphoning revenue away from the Pension Fund into other Government pockets through the Savings Bank Reserves. There would

still, Mr Speaker, even after this increase, be a shortfall of about £1.8 million between the expenditure of the Pension Fund in the payment of local pensions and the income of the Fund and it is intended that that shortfall will be met by transferring funds from the currently, and indeed historically, recent history over-funded short-term benefits fund, by making a transfer of capital of money from the Short Term Benefits Fund to the Open Long Term Benefits Fund. At the moment, the balance of the Short Term Benefits Fund exceeds £8 million. The expenditure of that Fund is something like £400,000 a year. Therefore, that will be used to make up the difference of £1.8 million.

Mr Speaker, hon Members may be interested to note, that even after the increase in contributions and even after placing the Fund in a form of investment or rather in investments being paid a commercial rate of interest as opposed to the interest rates currently being paid to the Fund by the Gibraltar Savings Bank, even after both those things, the shortfall remains at £1,839,403. The income of the Fund from contributions in 1997 was £5,865,047. As a result of the increase in contributions it will be £6,460,597 and it is envisaged that the investment income will be about £1.2 million. This will reduce the deficit on the Fund from the £2.43 million that it suffered in 1997, it will reduce it to £1.8 million as I have just said. Mr Speaker, I commend the motion to the House.

Question proposed.

HON J J BOSSANO:

There is one thing that the mover has failed to mention, Mr Speaker, which is the all-important issue as far as we are concerned and that is whether the total contribution is going to be altered or whether in fact the contribution as a result of the other motion is going to produce a compensating reduction so that the overall amount is the same. The Chief Minister mentioned the fact that in 1992 the contribution going to the frozen fund prior to the settlement of the Spanish pensions problem with the United Kingdom was £10, he must know that it was higher than £10 before 1992 and that therefore what has happened is that there was a policy of distributing the destination of the money to Funds which would not be susceptible to a position in which the United Kingdom would be able to argue that there was enough money there to be able to make a contribution to the Spanish pensions. Now that that problem is behind us it is quite obvious that the money can be distributed in another way and if what is going to happen now is that it is going to be distributed in another way, we will simply support the motion and that is it, but frankly what we

need to know is whether we are talking about a re-distribution or an increase in the total figure of the insurance stamps which then requires a different explanation from the one that has been given.

HON CHIEF MINISTER:

No, Mr Speaker, with respect, it does not require a different distribution. This House is not required to and has never been invited to consider the desirability of increasing the overall Social Insurance contribution. This motion is simply about varying the rates of contributions payable under the Open Long-Term Benefits Pensions Ordinance and therefore the hon Member is not being asked to express a view of whether the overall Social Insurance contributions should rise. Simply, he is being asked to express a view of whether the element payable in respect of pension contributions should or should not be increased. Therefore, I decline the hon Member's invitation to gratuitously debate with him whether there should be an overall increase in social insurance contributions generally.

Mr Speaker, the hon Member knows that there are many items in what people loosely describe as the "Social Insurance contribution" other than the Pension Fund. He must also know that whereas he used to increase those insurance contributions annually by 10 per cent and did not do so for the first time since he reached office, I cannot remember whether he did it immediately in 1988 or whether he started in 1989, but still, for six or seven years the first year in which he did not increase the contributions was January 1996 and that was presumably because he hoped to improve his electoral prospects. They have not therefore been increased in 1996, they have not been increased in 1997 and it is I think a matter of prudent and responsible administration of public finances that there should be a start made on putting the Pension Fund on a more solvent basis than it is today because, even if we diverted the whole of the contributions presently being paid to the Short-Term Benefit Fund, except the part that is needed to fund the annual running costs of that Short-Term Benefit Fund there is still a short to medium term problem and even if we used the whole of the £8 million accumulated capital which is in the Short Term Fund which is in a sense money that might otherwise have gone into the Pension Fund we are still talking about two or three years provision in respect of the shortfall. Therefore it is the Government's judgement, that if this Government in future years or in a future Gibraltar Government, is not to have a potential funding problem out of recurring revenue of this, it is important as indeed other Governments are doing around

Europe to put the funding of the provisions for old age pensions on a sounder footing than it has been hitherto.

Mr Speaker, the fact of the matter remains that although the hon Member speaks loosely about a redistribution of the destinations of money as if to suggest that all he had done is to divert money from the Pensions Fund elsewhere where it was still available to Pension Fund use, even accepting that explanation in relation to the money that was stored in the Short Term Benefits Fund the fact of the matter is that since 1989 the amount of revenue out of the Social Insurance contributions, out of the overall Social Insurance stamp, as it is colloquially called, that has reached the Pension Fund has fallen, and by this I mean Pension Fund including the levy fund, so this is netting the overall result, has fallen by £4.87. Even assuming the diversion of part of that, as he says, to protect it, its diversion to the Short Term Benefits Fund, the contributions to that Fund have only increased over an equivalent period by £2.19. There is, therefore, still, as the hon Member knows, a significant diversion of revenue away from Pension purposes or purposes which would easily be attributed to pensions. I recognise that there is this £8 million fund which can easily be diverted. That is recognised, but excluding that, and giving due credit and recognition to that there has still been a diversion of revenue away from pensions purposes making due allowance for the fact that the Fund was interrupted and contributions were, for a period, paid to the levy fund out of the Gibraltar Development Corporation. There has therefore been at a time when there is an increasing burden of pension payments as more and more people reach pensionable age, there has been a reduction during the term of office of the hon Opposition Member, there has been a reduction of the amounts of money actually being paid into pension funds of various descriptions out of those weekly Social Insurance contributions. Therefore, Mr Speaker, the Government are determined that the financial provision available for the payment of old age pensions will be put on a more secure footing than had been the policy during the last eight years and therefore that can only be done in the first instance by restoring the income stream to a level where at least it reduces the shortfall in annual expenditure and we will not stop there because we will also now, in the next year or so, and then later, find ways of making positive capital contributions to it so that the income shortfall is addressed by the allocation of additional capital resources to it.

HON J J BOSSANO:

It is quite obvious that the Chief Minister was determined to make a speech and he was going to make it irrespective to our reaction to this, that is evident. The point is very simple. As far as we are concerned our decision on how we should vote in this motion is partly conditioned by what the following motion means, which he says he refuses to explain. Is the next motion in his name on the Order Paper decreasing the contribution to the Short Term Benefits Fund to compensate for this increase so that the total contribution is going to stay the same or not? I do not see why he refuses to give an answer to that question. If he does not tell us then we do not know whether we are being asked to vote so that the total amount paid under the so-called Insurance Stamp goes up by £1 or whether it stays the same. As far as we are concerned, it is possible to not just put it up by £1 but by £2 or £3 simply by reducing what goes to other Funds. That is our view, but we do not know whether the Government are doing that or not because the Chief Minister says he will not give me the answer because I am not entitled to have an answer to that question. Then we can only abstain, because we do not know.

HON CHIEF MINISTER:

Mr Speaker, when we debate the second motion, the hon Member will realise that I am only moving the motion to correct an error that they made when they were in Government, not because I am doing anything that requires a second motion. We are only discussing this motion not because this House is entitled to debate whether there should be an increase in the overall Social Insurance contributions, the hon Member must know that he used to increase it annually, entirely at his whim and Gibraltar, let alone the House of Assembly, used to discover it when the new figures were published. The fact of the matter is that what this House is doing is resolving to approve an Order under the Social Security Open Long-Term Benefit Scheme Ordinance and therefore what hon Members are required to express a view about is not whether they think that an increase in Social Insurance contributions generally are justified or not but whether they think that the Pension Fund requires an additional £2 per week, per employee of additional revenue. That is the question under consideration under this motion and that is what Members should vote for, against or abstain, entirely as they consider appropriate.

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 Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon R R Rhoda
The Hon T J Bristow

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

The motion was passed.

HON CHIEF MINISTER:

Mr Speaker, I have the honour to move that: "This House resolves that the Social Security Insurance (Amendment of Contributions) Order 1997, be approved." Mr Speaker, Members have before them that Order which they will see has the effect of reducing the contributions paid by persons other than in the Gibraltar Regiment and that is not to say that we are increasing the amounts payable under the Social Security Insurance Ordinance by members of the Gibraltar Regiment. We are simply bringing this motion to provide the resolution of this House which should have been obtained to that increase when it was introduced by the Opposition Members. At the time they failed to bring a motion to this House to ratify it. Mr Speaker, in accordance with section 52 of the Social Security Insurance Ordinance, any order made by the Minister increasing the weekly rate of contributions has to be approved by resolution of the House of Assembly. The motion being moved seeks approval for an order, that is the Social Security Insurance (Amendment to Contributions) Order 1997, to amend the weekly rates of contributions payable to the Short Term Benefits Fund as follows: Persons who have attained the age of 18 years, in respect of the employer, reducing it from £1.44 per week to 17p per week. In respect of the employee, reducing it from £1.44 per week to 17p per week. In respect of persons who have attained the age of 15, but are under 18 years, employer: £1.37, it is reduced to 17p; employee: £1.36, reduced to 17p. Males and females who are members of the Gibraltar Regiment: employer:

44p, increased to 84p; employee: £8.32, increased to £10.02.

It should be noted, that members of the Gibraltar Regiment had in fact been paying the higher rates that are specified in this Order, that is to say the £10.02p for the employee and the 84p per week by the employer, since the 2nd January 1995. That is during the term of office of the Opposition Members. It has now come to light that for some unknown reason, presumably an administrative oversight by the Opposition Members, the Gibraltar Development Corporation Preoccupational Pensions Levy Regulations 1993, were not amended to reflect the 1995 increases to the Gibraltar Regiment employee/employer contributions. The main purpose of moving this motion, indeed the only purpose of moving this motion, is therefore to regularise the position of the Gibraltar Regiment as from a current date as no approval of the House is otherwise required under section 52 of the Ordinance to reduce the rates of contributions. The new action that we are taking is to reduce the contributions of over 18 year olds and under 18 year olds and that reduction in rates does not require a motion or the approval of this House. Therefore, to do what this Government are now doing would not need a motion at all. The motion is only brought to approve the Order in order to provide the cover in the form of the resolution of this House, which is required and should have been obtained in January 1995 to increases in Gibraltar Regiment contributions introduced at that time, in 1995. Mr Speaker, except for the members of the Gibraltar Regiment who do not contribute to the Group Practice Medical Scheme or the Employment Injuries Insurance Fund it seems appropriate to reduce the other weekly contributions to the Short Term Benefit Fund as it is considered that this Fund is substantially over-funded. The annual contributions income exceeds the cost of paying the Short Term Benefits which are, hon Members may wish to be reminded, Unemployment Benefit, Maternity Grants and Death Grants by over £1.8 million.

I commend the motion to the House.

Question proposed.

HON J J BOSSANO:

The Chief Minister has mounted a big song and dance about bringing this motion to the House. We are not forcing him to bring the motion to the House. He brings it because he wants to. He must have a reason for wanting to do it. If he wants to do it and we ask a straightforward question because we are not clear what

the implications of what we are being asked to vote on are and he simply refuses to give us an explanation, he might as well not bother to make a provision in the Ordinance that he requires the approval of the House and then change whatever he wants to change in the exercise of his judgement, as the Government of Gibraltar, by reducing the proportion that goes to the Short Term Benefit which he says he does not need the approval of the House for and increase the proportion that goes to the Pension Fund or indeed the proportion that goes to the Health Service as has happened in the past in the distribution of this money. As far as we are concerned we take it that what this is doing is in fact by reducing from £1.44 to 17p the contribution to the Short Term Benefit Fund making up for the £1 in the other resolution but there is still, of course, a gap of a few pence between the 44p and the 17p which we can only suppose is going to be put in another Fund which does not require, of course, the approval of the House. If it does not upset the Chief Minister too much and he cares to tell us, we would be interested to know. Of course, if he does not want to tell us then we will not know. Obviously, I am not aware why it is that a resolution was not brought in respect of the contribution to the Gibraltar Regiment if it was required. If that is indeed the case and if indeed it is the case that in 1995 which is before the changes that came in after the abolition of the Preoccupational Pension levies and the restitution of the Closed and the Open Insurance Fund, if it was still required under the old one then obviously it was not brought to the attention of the Government and that is why it was not done. That is all I can tell him. We will be abstaining on this one as well because we are not really clear what it is that is taking place.

HON CHIEF MINISTER:

Mr Speaker, what the Opposition Members are being asked to vote on in this motion is whether they think that the Government are right in providing the legal cover for something that they did in 1995 without legal cover. The hon Members are not being asked to vote on whether they believe that the rates that we are decreasing should be decreased or not because their consent is not required to that. What the hon Members are being asked to vote is whether they think that the increase in the Gibraltar Regiment rates which are not real increases but simply providing legal cover for the increases that they introduced on the 1st January 1995, providing it after the event, that that is something that they should support or something that they should not support or something that they should remain silent on by abstaining. Given that all that we are doing in this motion is tidying up a procedural deficit which they

incurred in administrative action that they took in January 1995 without coming anywhere near this House without seeking the support of the Opposition, without giving the Opposition answers to any questions, nor even the opportunity to put any questions for them to choose whether they would answer or not answer. It is understandable that from the Opposition benches the hon Member should have a greater commitment to the free flow and openness of information than he had when he was on this side of the House. Our commitment to the free flow of information is the same when we are on this side of the House as when we were on that side of the House. We are entirely complying with the fact. The hon Members would not have very long to wait until the orders that would give them the other provisions that would give him the information that he craves for are published in the Gazette. Indeed I think that they are being published some time early next week and therefore I am delighted to be able to inform the Opposition Member that the overall Social Insurance contribution is increasing by a net £3 in addition to the internal re-distribution which he has already in front of him, that is, the burden falls, £1 on employees and £2 on employers. It is still in respect of a two-year period, an increase which is lower than the one which he used to introduce as a matter of course on an annual basis.

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 Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon R R Rhoda
The Hon T J Bristow

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

The motion was passed.

BILLS

FIRST AND SECOND READINGS

THE EUROPEAN COMMUNITIES (AMENDMENT) ORDINANCE 1997

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the European Communities Ordinance so as to make provision consequential on the treaty on the European Union signed at Maastricht on 7th February 1992 be read a first time.

Question put. Agreed to.

SECOND READING:

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the amendment introduced by this Bill to the European Communities Ordinance is formal following the signing of the Treaty of the European Union at Maastricht on the 7th February 1992. The European Communities Ordinance 1972, makes provision in connection with the inclusion of Gibraltar within the European Communities. Its section 2, which is the interpretation section, provides in particular for a definition of the expression "Treaties". That definition presently makes reference, amongst others, to treaties dealing with:

1. The accession of the United Kingdom to the Community in 1972;
2. The accession of Greece in 1979;
3. The accession of Spain and Portugal in 1985; and
4. The accession of Austria, Finland and Sweden in 1994.

On the 7th February 1992 the Treaty establishing the European Union was signed and, in consequence, it becomes necessary to extend the definition of "Treaties" in Gibraltar's domestic legislation so as to encompass the Maastricht Treaty. In so doing, the Ordinance makes clear, as a matter of law, that any rights, liabilities, obligations and restrictions from time to time created or arising by or under the Maastricht Treaty and/or remedies and procedures from time to time provided by it are, without further enactment, to be given legal effect in Gibraltar and be recognised and available in law and be enforced and allowed to follow accordingly. By making

express reference to the Treaty of Maastricht in section 2 under the definition of "Treaties", Gibraltar is making formal provision for implementation of that Treaty. It is to be noted, however, that when the Maastricht Treaty was signed Member States agreed that the United Kingdom should not be bound by that part of the agreement dealing with the Social Chapter. That exclusion is reflected at Protocol No. 14 on social policy which forms part of the Treaty. That exception is reflected in clause 2(1)(k) of the Bill now before the House. Mr Speaker, the new United Kingdom Government recently informed the Community that it agreed to be bound by the Social Chapter but before it is, legal formalities will have to be completed in that respect.

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, the Bill provides that titles 2, 3 and 4 of the Treaty should be applicable in Gibraltar as a result of being incorporated in the 1972 Ordinance which deals with our membership of the European Community but not title 5 or 6. We are opposed to this Bill. As far as we are concerned, it seems to us an opportunity in the general principles to raise all the issues which are still unresolved in respect of our membership of the European Union and all its contradictions. If we look at title 2, we find that there is a provision in title 2 which introduces a new paragraph 3 to Article 138 of the Treaty which says, "That the European Parliament shall draw up proposals for election by direct universal suffrage in accordance with the uniformed procedure in all the Member States." We have before us an issue where precisely to give effect to this, a Bill is now going through the Parliament of the United Kingdom to create a system of voting which is uniform with that in other Member States and which moves away from single member constituency regions and we are being left out of it, unless our sympathisers in the British Parliament do something about it. Yet we have got in the House of Assembly a Bill which gives effect in Gibraltar to the provisions which are being reflected in the United Kingdom and we are accepting that this applies to us. We have in the same title 2 a new chapter setting up the Committee of the Regions. The new article says, "A committee consisting of representatives of regional and local bodies hereinafter referred to as the committee of the regions is hereby established with advisory status." The United Kingdom has 24 representatives in that Committee. It chooses not to have given Gibraltar the

opportunity of being there and yet we are saying in our law that we accept that whatever advice on decisions the Committee of the Regions takes, apply to us and we are not represented in it. It seems to me that the principles that this Bill gives rise to are the very principles which are making people question whether we are in the European Union just for our obligations and not for our rights and whether we ought to be doing something about putting this matter to the test once and for all. It is all very well asking people in the United Kingdom to raise the issue in the House of Commons and in the Lords as has happened recently when there was a debate on the issues and as will happen with the passage of the Bill, and then to ignore it on our own doorstep, seems to me to be contradictory with the view which is unanimous in Gibraltar that it is wrong that we should be dis-enfranchised as we are. Universal suffrage means what?

This is also the Treaty that gives provision for nationals of a Member State who are resident in another Member State to vote in the State of residence and not in his State of origin, that which we have always felt strengthened the argument beyond question that we have this anomalous situation that as citizens of the European Union, the concept is introduced by this Treaty. We are citizens of the Union. As citizens of the Union we are entitled to stand for the European Parliament and we are entitled to vote for the European Parliament anywhere in the European Union except in Gibraltar. The Treaty that gives us the right to vote and stand somewhere else is this Treaty and we should not be proceeding by saying, "Yes, we accept that this right applies to us as individuals", whilst at the same time Gibraltar is excluded and no other Community national can exercise the right in Gibraltar and we ourselves cannot exercise it in our own country.

The protocols include a protocol on the European System of Central Banks. That system, which of course, is the precursor of the move towards economic and monetary union and the creation of the single currency about which the United Kingdom has not yet made up its mind, nevertheless describes the system that will operate and it raises issues which are important for Gibraltar. For example in terms of what is going to happen in the future as a result of this Treaty the protocol says, "That the governing council of the European Central Bank shall have the exclusive right to authorise the issue of bank notes within the Community and that the national central banks may issue such notes." Gibraltar has got today the right to issue its currency and by the letter of this Treaty it will lose that right which in fact will be retained by every other Member State. Other Member States will be

able to replace their national currency by the Euro under the authority of the governing council of the European Central Bank. In terms of the financial services industry there is in fact, in chapter 5 of the new protocol, a reference to the European Central Bank being consulted by the competent authorities of the Member State on matters relating to prudential supervision of credit institutions. Is Mr Millner going to be one of the competent authorities of the Member State that will be able to consult the European Central Bank on matters relating to the prudential supervision of credit institutions? Has anybody asked that question before we decide that we want to implement the provisions of this protocol in the laws of Gibraltar?

Our view is that the Government should defer the passage of this Bill and put it in the melting pot with the other matters on which we want a clear statement from the United Kingdom as to what are our rights and what are our obligations in the European Union and we think it is the appropriate time to do it because it is quite obvious that there are many other things happening, not least of which the very clear message from the Spanish Government in the recent meeting with the Foreign Secretary that as far as Spain is concerned they are keeping a very vigilant eye on anything that happens in the context of the European Union which gives recognition to Gibraltar institutions as being the equivalent of national institutions like this, the competent authority of a Member State. It is all very well saying, "We will comply and accept that all these decisions that are made as a result of this Treaty we will have to abide by." But we are not in fact in the provisions of the Treaty in terms of being able to influence any of those decisions because the definitions exclude us.

As regards the Social Chapter, the fact that the Conservative Government decided to opt out and the Labour Government has decided to opt in, we in Gibraltar, it seems to me, are entitled in this, as in other things that have to do with the European Union, to take a view of our own as to whether we want to be in or whether we want to be out of these things. The fact that the United Kingdom is responsible for our Foreign Affairs does not mean that by virtue of the fact that they are responsible for our Foreign Affairs, whatever they decide in the European Union on domestic affairs automatically applies to us. If that is what it means we might as well be integrated and be done with it, why bother to have a different decision-making process if we can only implement their decisions. So they decide at one stage that they do not want to be in on the Social Chapter and we cannot join the Social Chapter and they decide at another stage that they want to be in and we cannot stay

out. The Social Chapter has nothing to do with Foreign Affairs. We could not have a better example of how the way our Constitution interfaces with the development of the European Union is in fact making a nonsense of the division between defined domestic matters and foreign affairs because here we are talking about social security, about employment contracts, about conditions of employment, financial contributions to job creation and these are all things that have been domestic affairs in the Colony of Gibraltar going back to the 1954 Constitution, never mind the 1969 one. Why should we decide in Gibraltar today that we are not going to apply the protocol on the Social Chapter in our legislation? Why, because the United Kingdom under a previous Government decided not to, and because presumably whatever they did in the UK they left it out and they have not yet got round to putting it in? So we are going to leave it out here and then when they decide to put it in, we are all going to come back and put it in ourselves, presumably. That must be the implications of the exclusion. We do not believe that we should proceed on that basis and we believe that this is an opportune moment to send a message back to the United Kingdom that we really need to clear up what it is we are supposed to be doing in Gibraltar in relation to Community law and what they are supposed to be doing and if all that we are supposed to do is to rubber stamp here whatever they decide, then we also have to look at exactly what obligations and responsibility means. If the UK is responsible for us then it should be responsible for footing the bills as well as everything else. If we have got a measure of responsibility then we have to have a comparable measure of rights and we have to have guarantees about our ability to have the same opportunity to influence things before they are decided as other Member States. This is an example of how the system continues to operate on the basis that we will simply go along with what is decided by others unless and until Spain chooses to block something and then we are excluded.

This is the Treaty that strengthens the provisions on the freedom of movement between Member States. Here we have in the title, that is not being provided in the Bill, the provisions on the pillars of justice and home affairs, title 6, which have been amended by the Amsterdam Treaty. What is the explanation why that is not included in the Bill? Is it that the title on cooperation in the field of justice and home affairs is the one that says that the Member States of the Union are supposed to be cooperating but in particular for achieving the free movement of persons and that they must regard as areas of common interest the rules governing the crossing by persons of the external borders of the Member State and the exercise

of controls thereon. What are the implications of the fact that this particular title unlike titles 2 and 3 is not in fact included in the Bill in Gibraltar? Given that this is now altered by Amsterdam are we going to have part of this remaining under the pillar of inter-Government cooperation and part of it being incorporated in the new title 3A over which we have a difference of view with the Government? We believe that the new title 3A will bring into play a Spanish veto and that that will be seen independent of the question of the Schengen Protocol in Amsterdam and regrettably that is likely to happen in the not too distant future but here we have that what is being amended in Amsterdam is here except that it is not in the Bill. Rather than divide the House we would recommend that the Government defers the passage of the Bill to a later date and takes note of the arguments that we have put and comes back and tries to do it as explained.

HON CHIEF MINISTER:

Mr speaker, I cannot provide the hon Member with an explanation to the apparently sound point that he makes in relation to the reasons for the exclusion of title 5A and 6 but I will certainly research the matter or have the matter researched before the matter goes later today to Committee Stage and certainly if there is not an entirely inescapable reason for doing so, it will be included, there is no doubt about that. I will leave that point to one side, whilst I make enquiries as to the reasons for its exclusion.

Mr Speaker, the hon Member says that this is an opportune moment to get to the bottom of all the problems that Gibraltar has in relation to the European Community membership. Presumably, what he might more accurately have said is that this is another opportune moment because he had eight years worth of opportune moments before the 16th May 1996 and he was able to resolve none of these things. The Leader of the Opposition says that we should hold out for guarantees, that we have the same opportunity to influence decisions as other Member States. Mr Speaker, is the hon Gentleman serious? Is he reverting to his separate Member State policy? His words were, "Guarantees of the same opportunities to influence decisions made under the Treaty as any other Member State". Mr Speaker, if I am to have the same opportunity as the Federal Republic of Germany to influence decisions made under the Treaty of Maastricht, Mr Chancellor Kohl will have to shut up at European Council meeting summits and make a space for me at the table of the European Community summit because certainly I cannot think of any other practical way of having the same degree and ability to influence decisions as any other Member State. I

will pass on to the British Government the view of the Leader of the Opposition that the Chief Minister of Gibraltar in future, when there are summits of European Heads of Government under the European Council, that the Chief Minister should be the sixteenth person present. That is what the hon Member has said.

HON J C PEREZ:

This is what you say that the hon Member has said.

HON CHIEF MINISTER:

Well, what the hon Member actually said, for the purposes of those that may be listening to this debate outside this House, the hon Juan Carlos Perez, Opposition Spokesman for Government Services, says that I am twisting the Leader of the Opposition's words. The Leader of the Opposition's words exactly were, "That we should have guarantees of the same opportunity to influence decisions under The Treaty as any other Member State." Therefore, as Germany is another Member State and the Leader of the Opposition thinks that I should have the same opportunity to influence decisions as Germany and as these decisions are mostly taken at Council meetings then, what the Leader of the Opposition is saying is that I should be present at those meetings. The hon the Opposition Spokesman for Government Services, Mr Perez, may toss in, in order to distract public opinion, accusations of distorting. There are two possibilities, either he agrees with me that what the Leader of the Opposition has said is palpable nonsense and is just trying now to distract or he has not heard what his master has said or he does not care what his master has said and seeks to protect him by reference to the truth or by reference to non-truths, it may be no different to him which of the two strategies he follows.

Mr Speaker, we understand the Leader of the Opposition spoke about melting pots. We understand that the Leader of the Opposition is trying to create melting pots all over the place. The Leader of the Opposition may think that this is a moment in time in Gibraltar's history, presumably because he is in Opposition and not in Government where everything should be thrown up in the air, uncertainty should be injected whenever and wherever possible, everything designed to create the maximum possible atmosphere of instability, anxiety and crisis, presumably so that he then tells the electorate how terribly badly Gibraltar has fared under the present Government, when he in eight years in Government was unable to resolve any of the problems of lack of influence in the European Union that he now expects me to deliver and indeed was simply slapped on the wrist and

given a little envelope from time to time with instructions of what he had to do or else. It is a pity that he did not consider that to be an opportune moment to ask for the influence that he is now encouraging me to seek. When the Foreign Secretary of the day, Douglas Hurd, gave him a little envelope saying here are a list of Directives which you must implement or else, why did he not say, "Well, hang on, Foreign Secretary, this is an opportune moment to bring to a head all the matters in the melting pot about Gibraltar's status within the European Union, and, Foreign Secretary, do you not think that before I should be asked to implement these Directives or before I am ordered to implement these Directives, do you not think that I ought to have the same opportunity as Chancellor Kohl of Germany had given that I did not have the same degree of influence, is it fair that I should be asked to comply with it?"

Mr Speaker, on the question of voting rights, approval of this Bill does not mean that we are accepting our exclusion but certainly if we do not implement this Bill I do not see how we can then lobby for benefiting anything that it makes provision for. Not, incidentally, that the Maastricht Bill is the source of legislation in relation to European voting, the hon Member must know that, but if anything that is a minor point. What he is in effect saying is that Gibraltar's position has not been properly protected under the Maastricht Treaty, because presumably what he would have preferred was that the Maastricht Treaty should have given Gibraltar unambiguously the right to vote, that the Maastricht Treaty should have given Gibraltar the right to participate in the Committee of the Regions, that the Maastricht Treaty should have made it even more clear, not that it is unclear, that Gibraltar, etc, etc. Well, Mr Speaker, I have to remind Opposition Members that they were in office in Gibraltar when the Maastricht Treaty was agreed in 1992 and given that they have recently moved heaven and earth to try and persuade the electorate of Gibraltar to blame me for everything that Gibraltar has not been fully protected in respect of under the Amsterdam Treaty whilst I have been in office, presumably by that rule with which I do not agree but obviously they do, by that rule it is equally legitimate for me to now accuse the hon Members of dereliction of duty, of negligence and of recklessness, all the adjectives that they have used in respect of me under the Amsterdam Treaty for having failed to make sure that all these things which now provide him with reasons for not wanting to ratify the Maastricht Treaty were not more favourably to Gibraltar dealt with at the time that the Maastricht Treaty was negotiated which is when the hon Member was then the Chief Minister. It is just another example of the sheer hypocrisy and duplicity with which the hon

Members conduct their criticism of us by comparison to their own performance when they were in Government. It is, indeed, incredible, but what is incredible is not the fact that I told the Members I call a spade a spade when a spade is what the hon Member has got in his hand. The incredible thing is not that I point it out every time that he does it, the incredible thing is that he should go around in life forgetting all the things that he has done or not done during the last eight years and assuming that his political life now began on the 16th May 1996. His political life and the things for which he can be held accountable by comparison to us began in 1988.

Mr Speaker, if the hon Member feels that what he regards as issues in relation to voting, Committee of the Regions, Citizenship of the Union, Central Bank issues and all the other litany of irrelevant considerations to this Bill that he has left out, but if he thinks that those are issues which arise out of the Maastricht Treaty in respect of which he cannot support this Bill because Gibraltar's interests were not properly protected under the Maastricht Treaty then I can simply only express regret that he did not do a better job when the Maastricht Treaty was being negotiated, just as he has accused me of not doing a very good job in relation to Maastricht's successor which is Amsterdam. He cannot have his cake and eat it, he cannot have it both ways. I do not know whether the hon Gentleman is in a sense urging this House not to pass this Bill for the reasons that he has outlined. Is he saying that Gibraltar should in a sense exclude itself? Because he must know that the Maastricht Treaty is a Treaty amending the Treaty of the Union. Is he suggesting in effect that Gibraltar should exclude itself from the whole of the Maastricht Treaty because of these issues that he thinks are unsatisfactory? I am putting to one side the question of the apparent exclusion of titles 5 and 6 which is a separate issue. But on the assumption that that is satisfactorily resolved, he was suggesting that this should not be passed and this was in effect what he was saying, that this was the opportunity to say, "Well, we will not pass these things which create obligations until we know what our position is in respect to....." The hon Member must know that such a course of action is tantamount to excluding ourselves from the European Community if we do not give legal effect to the amendments to the Treaty establishing the Union. In the unlikely event that the hon Member should ever find himself again on this side of the House, he can take such drastic steps, if that is what he thinks would be a prudent and responsible way to manage the affairs of Gibraltar. I do not mind, if that is the hon Member's position, I have no difficulty or hesitation in telling him that this is another issue upon which we are

disagreed and that the Government do not consider that it is in the best interests of Gibraltar to conduct its affairs by reference to such attitudes. The hon Member asked how do we influence decisions under the Treaty? I think that is a legitimate question. I think Gibraltar is entitled to influence decisions but not in the way that the hon Member implies. This is in a sense what we were discussing yesterday about the process of consultation that exists between the United Kingdom, which is the Member State responsible for our External Affairs, and ourselves. That process of consultation may work or not work from time to time, from issue to issue, in a way which gives us that measure of input into the United Kingdom's position which we might be able to agree we are entitled to, but I do not doubt that Gibraltar's right and ability to influence decisions, the decision-making process within the European Community is limited to the influence that we can bring to bear on the United Kingdom decision-making process. Or is he suggesting that, for example, on those decisions that require unanimity that we should have the veto as well? Or in those decisions that are made in the European Community by reference to qualified majority voting, that Gibraltar should have a vote in the qualified majority and the qualified minority? Because it is either that or influence through the United Kingdom decision-making process, there is nothing in between having your own vote or influencing the vote of the United Kingdom, procedurally whatever we might like the position to be aside, procedurally, there is nothing in between those two, unless what the hon Member believes is that because that is the reality, because those are the only two options, if the United Kingdom does not have regard to what we would like to happen and makes its decisions contrary to the one that we would have liked to make, that in those circumstances because we have not had the right to influence the decision, that in a sense we can opt out. In a sense what he was saying is that because we have not had the opportunity to influence we should not be required to implement. That is absurd, Mr Speaker, because under the qualified majority system of voting, not even Member States that find themselves in a minority have the right to opt out. The suggestion that Gibraltar should have the right to opt out simply because the Community takes decisions, or in other words, membership a la carte, depending on whether we like the decision or not, is not something that is going to find favour with anybody. I do not need to put it in the melting pot to be confident that we are not going to get away with that. This must be what the hon Member meant when he said that we were entitled to our own view on whether we were in or out. No Member State, excepting Treaty negotiations, but on measures, no Member State has a veto on whether they are in or out.

Mr Speaker, the hon Member spoke about the Social Chapter in his contribution and he spoke of the fact that the United Kingdom had negotiated for itself an opt out from the Social Chapter. I realise that he was only using it as an example to make the point and that he might easily have chosen another example, but in respect of the example that he chose, the hon Member spoke as if the fact that the Conservative Government in the United Kingdom had both ideological policy reasons of its own chosen to opt out of the Social Chapter, somehow compelled Gibraltar to stay out but if the hon Member as a matter of domestic political ideology had wanted to implement the Social Chapter there was nothing to stop him as a matter of domestic legislation amending the Employment Ordinance of Gibraltar and all the other Ordinances of Gibraltar to give legislative effect to the Social Chapter. In other words, not introduce the Social Chapter as a matter of Community obligations, but to have legislated it as a matter of domestic legislation, entirely voluntary, because the Government of the day believed that that is what the employment and commercial law of Gibraltar should have been. He did not do it. He has had since 1992 to do it. He did not take the option to do it. People are entitled to deduce from that, given that he was free to do it, although not compelled to do it, he was not under any compulsion to do it, but he was free to do it voluntarily, given that he did not do so in four years people are entitled to deduce that he did not do it because he did not want to do it, because nothing was preventing him from doing it and therefore he cannot shield behind the United Kingdom exclusion opt-out for the fact that Gibraltar does not today have on its legislation the Social Chapter.

Question put. The House voted.

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

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

The Bill was read second time.

CHIEF MINISTER:

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 SOCIAL SECURITY (CLOSED LONG-TERM BENEFITS AND SCHEME) ORDINANCE 1996 (AMENDMENT) ORDINANCE 1997

HON CHIEF MINISTER:

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 CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. The object of this Bill is to give a further opportunity to those persons who are eligible to pay arrears of contributions under the Social Security Insurance Ordinance 1975, but did not elect to do so at the time, to make up for incomplete periods of insurance. As announced in the Government Press Release of the 20th October 1997, this election applies to all those persons who have an incomplete contribution record in respect of any periods of actual employment in Gibraltar at a time that they were exempted or prohibited by law from contributing to the Pension Scheme either because they were earning more than £500 earning ceiling or because they were self-employed. Government are aware that in 1975 a number of people who were precluded from making complete payments in respect of broken periods of arrears because there was no provision in the law to deal with broken periods of arrears, for example, somebody who was self-employed from 1955 to 1965 and then compulsorily insured in 1966, the following year, but self-employed from 1967 to 1974 because of the way it was drafted at the time, was unable to pay all the arrears prior to

1966. They could only pay in respect of one broken period, not in respect of all scattered periods of arrears. This Bill will regularise the position of those concerned by allowing for the payment in respect of periods of arrears which have been interrupted by compulsory insurance.

Furthermore, as previously announced, this option will also be given to the widows and widowers of any insured person who was eligible in 1975 but is now deceased and to those persons who may have opted at the time to pay the arrears by instalments but were unable to complete all the payments. Hon Members may be aware that previous opportunities of this sort to catch up with arrears in respect of these periods were not extended to the widows of deceased pensioners who if the pensioner had been alive would have been able to contribute but because he is dead the widow was not allowed and therefore continues to collect a lower widows' pension. This opportunity is given to widows when their deceased husbands would have been qualified to pay the arrears if he was still alive today. Since October 1997, the Department of Social Security has been dealing with numerous enquiries from current pensioners and contributors. As a result, a further 105 persons have been identified as eligible to pay arrears. This includes some with broken periods of arrears and others which were previously considered doubtful as there was not sufficient information on the actual insurance record to determine their eligibility. It is now estimated that the initial cost to the Pension Fund will be in the region of £440,000 per annum and not £360,000 per annum as previously stated at the last meeting of the House.

Mr Speaker, there is an amendment that I will move at the Committee Stage to add a new clause 7(b)(8). The effect of the amendment will be to eliminate any ambiguity that the legislation might have with respect to the right to claim backdated Social Security Pension payments. I commend the Bill to the House.

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

HON R MOR:

Mr Speaker, the Opposition will be supporting the Bill. We have made our position quite clear before now and will be voting in favour.

HON CHIEF MINISTER:

Mr Speaker, I will use my right of reply just to applaud the fact that the House is united on this salutary social advance in Gibraltar.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE TIMESHARE ORDINANCE 1997

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to provide for rights to cancel certain agreements about timeshare accommodation and to transpose into the law of Gibraltar Council Directive 94/47/EC, on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis 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 afford protection to individuals and to safeguard their rights to cancel agreements about timeshare accommodation. This is being achieved by the transposition into Gibraltar law of Council Directive 94/47/EC on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis. Although timeshare is not currently a feature of tourist accommodation in Gibraltar, we have the requirements to transpose the Directive and to afford the necessary protection in case it should become widespread in the course of future touristic development. Furthermore, there are timeshare agreements outside Gibraltar which may be covered by certain aspects of this legislation because it does extend to arrangements which would be governed by Gibraltar law.

In drafting the Bill now before the House, consideration has also been given to the UK's Timeshare Act 1992, and Timeshare Regulations 1997. The key provisions of this Bill are contained in Sections 3, 4 and 5. Section 3 imposes an obligation on persons who in the course of business propose to another to enter into a timeshare agreement and to furnish the information specified in that section and also set up Schedule 1. Section 4 provides that a person shall not advertise timeshare rights during the course of a business unless the advertisement indicates where the information contained in section 3 may be obtained. Section 5 and Schedule 1 set out those obligatory terms that have to be contained in a timeshare agreement. Section 6 is particularly important. It provides for a timeshare agreement to be in writing and where the customer is resident in or a national of an EU state is has to be drawn up in the official language or in one of the official languages of that state or in the official language or one of the official languages of the state of which that person is a national. Therefore, if the customer is a resident of Gibraltar the agreement shall be drawn up in English, in addition to any other language. Non-compliance with this provision would constitute an offence. Section 7 imposes an obligation on the person advertising the business if the timeshare or foundation is situated outside Gibraltar but in an EU state other than the UK to provide the person advertising the business with a certified translation of the agreement in the official language or one of the official languages of that state. Again, non-compliance with this provision constitutes an offence. The rights of the customer to cancel an agreement are set out in sections 8 to 12 whilst sections 11 to 15 provide a right to cancel timeshare agreements by giving notice *and/or* automatic cancellation. Section 13 prohibits the persons conducting the business from requesting or accepting from the person advertising the business any advance payment before the period during which notice to cancel the agreement may be given. Non-compliance with this provision also constitutes an offence.

Finally, Mr Speaker, the remaining sections deal with other matters such as repayments of credits and interests, defence of due diligence and the liability of persons other than the principal offender. 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, obviously the impact of this Bill in Gibraltar is limited in so far as there is a minute, if any, number of timeshare offers in Gibraltar but obviously there are companies registered in Gibraltar that may be partaking in timeshare business in respect of property situate outside Gibraltar. In so far as the Bill or as the primary aim of the Bill is to give protection to purchasers, there have been considerable problems in the past, particularly in the UK and also in Spain in respect of unscrupulous timeshare operators who have used devices which have not given those purchasers the opportunity, after being bundled into a room for many hours on end, of then retracting or pulling away from the offer and they have almost been coerced or forced to sign. We support the Bill because it does give added protection. Again, we do not think it will have much applicational effect locally but certainly to those operators using Gibraltar companies it is important that they operate from here with these provisions in place and to that end, Mr Speaker, we support the Bill.

HON P C MONTEGRIFFO:

Mr Speaker, I wish to highlight that although I agree that the impact is limited in the strict domestic sense, as I highlighted in my contribution, the Bill extends to any agreement governed by the laws of Gibraltar and indeed certainly now thinking with my previous professional experience it is not uncommon for Gibraltar to be used as a jurisdiction which regulates timeshare operations in other jurisdictions. That is indeed good business and places like the Isle of Man, for example, have also got involved in this and I think this legislation will further enhance it. It will give an element of protection that was missing.

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 WIRELESS TELEGRAPHY ORDINANCE (AMENDMENT) ORDINANCE 1997

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to amend the Wireless Telegraphy 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. This is a short Bill but it is a Bill which is important in terms of growth and competitiveness for the telecommunications industry. It deals with the management of the radio spectrum and its provisions are crucial for ensuring the success of the new telecommunications companies setting up in Gibraltar. The Bill deals with a finite resource, namely the radio spectrum and it is on the radio spectrum on which communication and the information of evolution crucially depends. The measure will allow the Government to charge for the right to use certain waves by radio-based services. The Bill will dramatically modernise the management of the radio spectrum. A large range of businesses will now depend on the radio spectrum, from large telecommunication companies through to taxis and mini-companies who use these frequencies on their day-to-day operations. In future, we can expect the boundaries between radio, telephony and computing to become increasingly blurred allowing, for example, for portable computers to communicate more quickly and to convey greater quantity of information. Multi-media convergence is facing us as we approach the century. To meet these challenges we have agreed that a policy of spectrum pricing should be introduced and this is what the Bill does. The framework for management of the radio spectrum is based on the UK's 1949 legislation designed for a time when spectrum availability was not a problem. Up to now that has served well but does not provide the tools needed to manage the spectrum effectively. By implementing this document's policy the Bill will update the management spectrum capability. Spectrum pricing is seen as an efficient way of managing that radio spectrum. The Bill will enable the setting of fees to take account of a range of criteria connected with the efficient management of the spectrum rather than at present simply basing them on administrative costs.

The Bill contains certain enabling powers. The detailed implementation of these powers in relation to licence fees would be subject to regulations. We expect those regulations to be published shortly in the new year.

Those will provide the flexibility essential to respond to the face of change in the sector. This Bill is a first step in setting up a pricing structure to the new satellite operators coming to Gibraltar. Government's policy will, in the long term, also impact on the licensing of all operators using the radio spectrum in Gibraltar. The Bill provides that these, other than fees for licences for television reception, be set by regulation. It sets out particular matters to which the Wireless Officer must have regard in setting fees. These are the amount of spectrum available for a particular service, the likely demand for spectrum and the economic benefits, innovation and competition issues. Article 11 of the European Telecommunications Licensing directive which Gibraltar is in the process of transposing, deals with fees and charges for individual licences. The directive recognises that where scarce resources such as the radio spectrum are to be used, member states should be allowed to impose charges that go beyond cost recovery to reflect the need to ensure the optimum use of those resources. The proposals in the Bill are therefore fully in line with that directive. When the transposition of the Telecommunications Bill becomes law next year it is proposed to introduce regulations as well. The Bill also gives enhanced security of tenure to licence holders. It enables the Wireless Telegraphy Officer to include in licence terms conditions to restrict his power to revoke or vary a licence. At present a Wireless Telegraphy Ordinance licence may, in most cases, be revoked or varied at any time. That would normally be done only where the licensee has conspicuously failed to respect the terms of the licence but Government accept that different considerations are likely to apply where licensees may need to undertake a large investment. We accept that in those circumstances licensees will want firmer, legally-binding guarantees that they have a security of tenure and that their licence cannot be revoked unexpectedly. Licences could contain conditions that revocation would be limited to security requirements or to enable Gibraltar to comply with European Union obligations or international agreements. The provisions contained in the Bill are similar to those contained in the British Government's own Wireless Telegraphy Bill which is presently before Parliament. The regulations to be made under this Bill will, firstly, make provision for the levying of the relevant fees and, secondly, set out a form of licence to be granted to a successful applicant. The Bill also does other things. Clause 2(b)(i) brings up to date the definition of wireless telegraphy and its proviso. Clause 2(c) defines the Minister with responsibility for Wireless Telegraphy as the Minister for Trade and Industry, a regulation will be published later making the Minister, and not the Governor, responsible for certain aspects of the Wireless

Telegraphy Ordinance. Clause 2(6) creates various offences relating to misleading messages and interception and disclosure of messages. It will be an offence to give false or misleading messages which could endanger the safety of any person or any vessel, aircraft or vehicle. It will also be an offence for any person, unless authorised to do so, to obtain information of the contents, sender or addressee or any message. This will, in practice, outlaw, amongst other things the monitoring by members of the public of frequencies used by the Emergency Services. These offences are part of the UK's Wireless Telegraphy Act but were never incorporated into the Gibraltar Ordinance which has remained virtually unchanged, without amendment, since 1949. The final provisions of the Bill contained in clause 2(7) clarify penalties and legal proceedings.

Mr Speaker, spectrum is regarded nowadays as a national asset. It therefore has to be well controlled and priced. The Bill rejects the old idea that spectrum users should only be charged pretty much the administrative costs involved with its management. In future, prices will be based on the commercial value of the spectrum used by each licensee. This is a business asset which Gibraltar needs to exploit. In conclusion, the Bill provides for the better management of this radio spectrum including appropriate mechanisms for charging which will be fair and equitable.

There will be minor amendments that I will seek to move at Committee Stage. I do not think there is a necessity to deal with them now. They are small in nature and therefore I will reserve my comments on those amendments until that stage. I commend the Bill to the House.

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

HON J C PEREZ:

Mr Speaker, the Bill really is designed to develop telecommunications as an industry other than as a service to the community in Gibraltar. This idea developed during our term in office and we welcome the Bill and we welcome that the development of telecommunications from a base in Gibraltar is taking off.

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 House recessed at 12.15 pm.

The House resumed at 12.25 pm.

THE BANKING (AMENDMENT) ORDINANCE 1997

HON P C MONTEGRIFFO:

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

Question put. Agreed to.

SECOND READING

HON P C MONTEGRIFFO:

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

This Bill, which is like various others that the House will now be taking, is rather technical. It contains a number of different amendments to the Banking Ordinance 1992. They are broadly of three types, some improve or modernise banking supervision, some are consequential on the series of Ordinances on financial matters which are currently before the legislature and some are more in the nature of housekeeping. Section 2 is a modernising provision relating to the expression "approved auditor". Under existing law, the Commissioner of Banking by a notice published in the Gazette, may declare professional bodies to be approved bodies. This in fact has never happened. There is already a method of approving auditors for the purposes of the Companies Ordinance and this amendment links this Ordinance to that provision. Section 3 makes a housekeeping amendment by taking out of the Banking Ordinance 1992 a provision which provided a test for when a person was resident in Gibraltar for the purposes of the Ordinance. This provision has ceased to have any practical utility after changes to the licensing regime in 1992. Section 4 is a provision to improve banking supervision. It strengthens the definition of deposit taking in a way to close certain loopholes in the existing wording. It must be said that these loopholes have appeared more in the UK rather than in Gibraltar but Gibraltar is passing this legislation to mirror UK requirements. Section 5 is a

further modernising provision. The existing exemption for insurers in section 10 of the Banking Ordinance refers to Gibraltar insurers who are authorised by certificate under the Insurance Companies Ordinance and does not deal satisfactorily with European insurers who are covered by certain Insurance Directives. As a result of changes in the Gibraltar Insurance legislation, it is now appropriate to refer to licences rather than certificates and the new exemption in section 5(1) of the Bill also covers, therefore, what are called EEA companies, an expression defined in section 10(3) of the Banking Ordinance 1992 and which is set out in section 5(2) of the Bill. Section 6, deals with the issue of administrative notices and replaces the existing section 16 of the Banking Ordinance with a more detailed provision. This is modelled on a provision contained in section 28 of the Financial Services Bill which is currently being taken or is being taken in this session of the House. Under the new version of section 16 the administrative notices can relate not only to the manner in which the Commissioner of Banking will exercise functions under the Ordinance but also can indicate what is required of credit institutions in Gibraltar in order to secure a compliance with relevant Community obligations. Sub-section (3) of the new section 16 lists several of the directives which are relevant. Section 7 is, in part, housekeeping and in part consequential on other current legislation. Sub-section (1) removes an unnecessary word from the definition of relevant investment business in section 2 of the Banking Ordinance. Sub-section (2) amends sub-section (8) of section 18 of the Banking Ordinance, first so as to take account of the fact that the expression "relevant investment business" is not appropriate to the sub-section because the definition, unlike the sub-section, is limited to recognised institutions.

Secondly, the amendment takes account of the new system of authorisation of investment firms to be introduced by the Financial Services Bill before this House. Section 8 is a further provision relating to Banking Supervision. It amends section 23 of the Banking Ordinance which sets out certain additional criteria which have to be fulfilled for the grant of a licence. The purpose of the amendment is to bring the text of the Banking Ordinance more closely into line with the first Banking Coordination Directive. Sections 9 and 10 and the Schedule deal with representative offices. Section 9 makes two changes about representative offices of Gibraltar licensees. These are in the nature of housekeeping. Section 10 and the Schedule, however, set out a more detailed regime for the establishment and maintenance in Gibraltar of representative offices of overseas deposit takers. These provisions are modelled,

again, on the UK's legislation and specifically on part 4 of the Banking Act 1987. Section 11 inserts a new section 75(B) to the Banking Ordinance. This creates the offence of fraudulent inducement to make a deposit and again improves banking supervision.

Finally, section 12 is another provision which is in part housekeeping and in part consequential on the new provisions inserted into the Banking Ordinance. There will be a number of minor amendments again introduced at Committee Stage. I do not think it necessary to make mention of those now, I therefore commend the Bill to the House.

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

HON A ISOLA:

Mr Speaker, as the hon Minister has said, together with a number of other Bills we will be dealing with later today, all deal with aspects of amending and in some cases introducing legislation which are geared entirely towards minor exceptions, the aspects of passporting in respect of banking investments and tidying up as he referred to in matters that affect insurance. The view that has been expressed to us by the industry has been, that until the position of Gibraltar and passporting generally has been clarified the brakes should be put on more legislation dealing with EU Directives and passporting. Indeed, the minutes of the resolution of the Bar Council which I referred to yesterday in Questions, contains a specific request from the Bar Council in particular, I am not aware of other associations or representations requesting that until the validity within the European Union of insurance, of banking and of investment vehicle licences issued in Gibraltar has been clarified, that no further EU Directives in relation to financial services should be transposed. That is a view that the Opposition Members agree with and indeed, taking into consideration the views of Government on the tax co-ordination proposals and the effect as outlined by the Chief Minister at the Insurance Intermediaries dinner, if they are as serious as that, and they may be, then clearly that needs to be clarified also. Mr Speaker, for those reasons we will not be supporting this Bill or, indeed, the ones that follow which transpose EU Directives.

HON P C MONTEGRIFFO:

Mr Speaker, I very much regret the position that is being adopted by the hon Member, not just on this Ordinance but indeed on the others which are now to be dealt with. I

think it is a fundamentally flawed, irresponsible and dangerous line for Gibraltar to adopt. The suggestion that Gibraltar can continue with development of financial services whilst at the same time flouting Community obligations in the way that the Opposition seems to be suggesting is naive. We share the views of the industry to the extent that there is a need to ensure that the practical benefits of passporting are obtained and to this end we make representations to London. I was in London on Friday last week with the DTI, with the Bank of England and with the Treasury making clear the need that Gibraltar had to ensure that insurance passporting, which is the only passporting that we have, actually worked in practice. I remind the House that we have the strongest possible UK ministerial support to our passporting rights. When insurance passporting was obtained in June this year it was accompanied by a very firm statement from the Minister saying that we could count on UK support in ensuring our rights and ensuring that they be respected and that is what we have to unite to obtain, practical recognition of rights. But the only way we achieve rights, is by passing legislation and by putting into place the necessary regulatory infrastructure to allow those standards of supervision required for passporting to be met. We cannot, frankly, expect those to be had whilst at the same time not moving on a parallel basis at least to implement both the legislation and the supervisory requirements. Banking passporting is an important badge. Investment services, which is the one after this, will be even more important. I totally reject the hon Member's view that the industry's view is that we should hold back on transposition until this is clarified. I do not accept that is the case. There are many aspects, there are many sectors in the industry that are of the view that indeed it is within the European Union that Gibraltar's edge can be won for financial services and whilst we recognise that there are some other sectors in the industry that have reservations, it is a distortion to suggest that the Government are pushing through against the views of the industry. The industry rightfully are concerned to ensure that these rights are in practice respected but my impression and I speak to the industry a great deal is that they are very strongly behind the Government's efforts to ensure that we achieve passporting and that we achieve the practical benefits that passporting will then bring. It is not open to the Government, nor to Gibraltar, simply to put on hold transposition of directives which need then to have opportunities for Gibraltar whilst we clarify perhaps again, in another melting pot, where Gibraltar's rights in these areas lie. The Government have no doubt about where Gibraltar's rights in this area lie. Gibraltar is a full part of the European Union for the purposes of financial services. The UK has always

endorsed that position and therefore we feel it is vital to proceed with our programme of transposition to get the rights that we will then want to have given in practice. I will now give way to the hon Member before I finish.

HON A ISOLA:

Mr Speaker, we are not recommending flouting, I think is the word that my hon Friend used, we are not recommending flouting. What we are saying is precisely what the Minister himself seems to be doing in actual fact which is to seek clarification. He referred to the meeting on Friday and of course the industry backs that because that is what the industry has asked for. I can tell him that the resolution of the Bar Council, and I quote, "The meeting unanimously agreed that immediate clarification should be sought from the UK and the relevant authority in the Commission of the EU in a..... with particular reference to the list, some of which are not mentioned, the validity within the European Union of the insurance, banking and investment vehicle licences issued in Gibraltar". That, from what the Minister has said, is in practical terms what we are doing. What we are saying is that until one has that clarification there is no point in bringing more legislation into place which will then need to be clarified once it has been done anyway. All we are saying is clarify the position. We have already got insurance passporting, well let us clarify the position of insurance and if then that is found to be working then you develop on to the next step but to suggest that what we are saying is flouting is inaccurate and for that reason I rose, Mr Speaker.

HON P C MONTEGRIFFO:

Mr Speaker, I think there may be an element of misunderstanding on what and how clarification is achieved in this area. The clarification in this area is not achieved by a Gibraltar Minister or the Government of Gibraltar sitting down with the Foreign Office or just an official at the Treasury or the DTI and saying, "Please tell me that Gibraltar licensees..." for example, the insurance licensees "are going to be respected in Europe". I want to highlight how practically clarification is sought. That clarification, Mr Speaker, exists, the clarification to the extent that we need it from London is there. London tells us quite clearly that Gibraltar licensee in insurance and it will be subsequently in banking, investment services, is a European licensee and you have passporting rights, period. The clarification the Member is seeking which we are seeking, which the industry is seeking, is one step beyond that and it is not so much clarification but specific recognition by other competent authorities in

other parts of the EEA that a Gibraltar licensee is competent to undertake that business on a passporting basis and that indeed the Financial Services Commission is a competent authority for the purposes of this business. That clarification or that recognition can in fact in practice only be achieved when you have something with which to face a competent authority in Germany or in France or in Denmark with. One cannot get these clarifications or recognitions in a vacuum. It is not possible before banking legislation is passed for the UK to turn up to France and say, "Recognise Gibraltar licences", because the legislation will not be in place. It is actually the clarification that the Member is seeking which the industry and the Government shares the need for is exactly the clarification from competent authorities in other EEA States and that can only be achieved, Mr Speaker, once we have put our house in order, once the legislation is transposed and once there is an actual recognition issue facing a competent authority elsewhere. That is exactly what we are doing now in insurance. That is exactly what we propose to do in banking if there is a problem and exactly what we have to do in the case of investment services. It is not possible to seek these clarifications from where they need to come, not from the UK where we have them, but from other Member States without this being put into place as it has to.

Question put. The House voted.

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

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 BANKING (EXTENSION TO BUILDING SOCIETIES) ORDINANCE 1997

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to repeal the Building Societies Ordinance; to bring building societies within the scope of the Banking Ordinance 1992; and to make transitional provisions for registered building societies proposing to be wound up 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.

At present building societies are exempt from the provisions of the Banking Ordinance 1992. This Bill makes provision for them to be brought within the scope of that Ordinance. The effect of this Bill is to repeal the Building Societies Ordinance so that banks and building societies will all become subject to the same prudential and supervisory regime. The building societies are currently registered and recognised under the Building Societies Ordinance and these fall within the definition of credit institutions as defined in Council Directive 77/780/EC, which is the first banking co-ordination directive. This Bill, Mr Speaker, by applying to building societies the provisions of the 1992 Banking Ordinance which, amongst other things, gives effect to a number of EC directives relating to credit institutions, will thereby extend European Community obligations to such societies. Clause 3 of the Bill provides for a transitional period during which existing building societies registered under the Building Societies Ordinance may be wound up. The intention is to give those societies, which do not wish to become subject to the same prudential and supervisory regime as banks, time to wind up whilst remaining subject to the requirements of the Building Societies Ordinance. If at the end of the winding up period of one year or longer the Commissioner of Banking allowing the society has not

been wound up, then it becomes subject, or will become subject, to the provisions of the Banking Ordinance from the end of that period. Clause 4 applies to those building societies who do not choose to take advantage of the winding up provisions. At the end of the appropriate period, set out in the clause, a society which has not been wound up will become a company under the Companies Ordinance and it will be necessary for such societies then to be subject to the provisions of the Banking Ordinance. This Clause sets out clearly the requirements which such a society must fulfil when converted into a company and the subsequent steps which the directors will have to take. Clause 5 deals with the status of building societies authorised in EEA Member States. They will have the same rights and obligations as a European institution under the Banking Ordinance 1992. Clause 6 deals with minimum capital requirements which registered building societies will have to meet under section 35 of the Banking Ordinance.

Mr Speaker, here let me just highlight that although the usual minimum paid up capital and reserve requirements for credit institutions and banks is 5 million ecu, the grandfathering provisions in the Bill will allow building societies that have a lower paid up capital and reserve to keep that lower level and not have to match the 5 million ecu limit normally applicable to credit institutions. Clause 7, places restrictions on the use of the title "Building Society" whilst the Schedule sets up the transitional provisions that I explained previously. Perhaps by way of further explanation I could highlight to the House that in the case of building societies in the UK, the UK has essentially extended the regime of credit institutions to building societies the same as we are doing in Gibraltar but has chosen to register and regulate building societies by way of separate legislation, namely the Building Societies Acts, rather than by the Banking Acts. The prudential and supervisory regime is the same and the need to comply with the relevant credit institution regulations is also the same. It should also be added, that although previously building societies and banks in the UK had been regulated by different bodies, namely the Bank of England and the Building Societies Commissioners, in view of the new moves in the UK to standardise and to bring together all the regulatory machinery, it is in fact proposed that building societies, together with banks and everybody else in the financial services industry, will be regulated by the Financial Services Agency which is being established in the UK.

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, other than the comments that have already been made about the previous Bill which applied to this and every other Bill dealing with financial services, all of which we are opposing, in this particular instance, in addition, as far as we are concerned we are eliminating the possibility of building societies existing as institutions other than the fact that one can choose to register as a bank in the Banking Ordinance and call oneself a building society instead of calling oneself a bank. Clearly, we are not obliged to do this. In fact, nobody else is doing this anywhere in the European Union.

Either people did not have building societies in the first place or they are having to ensure that there are parallel provisions as in the case of the United Kingdom so that the building society, which is to a very large extent in direct competition with banks, is required to meet the same standards as banks. In practice, of course, there are very few Gibraltarian building societies and in fact passporting into Gibraltar has been something that was provided a very long time ago, since the view of the GSLP was that notwithstanding the fact that we were not getting reciprocity, since we wanted the business, we wanted to encourage people who wanted to come here to come here even if we could not travel in the opposite direction. We would have been doing ourselves no favours by saying, "Because we cannot go to the UK we will not let UK building societies passport into Gibraltar". So we have the situation where somebody that is a building society in the UK and the Building Societies Act in the United Kingdom, or whatever may be the relevant legislation, will be able to passport into Gibraltar but nobody will be able to create a building society in Gibraltar itself. We do not see why we should finish up with that situation. What they can do of course is register as a bank under the Banking Ordinance and call themselves a building society. We do not think it is the same because if it is the same why do we need to change anything other than make the building societies have similar standards under the Building Societies Ordinance as has been done in the United Kingdom. The United Kingdom retains the two possibilities, there must be a reason for having the two possibilities. We have had it here, I do not know whether there are any other Member States that have got the equivalent of building societies or not or whether that is a purely United Kingdom phenomenon. Certainly, the United Kingdom does not feel that in order to bring them within the umbrella of the 1977 provisions on credit institutions and they

have had twenty years on the road in 1997 to eliminate the existence of building societies outside the provisions of the United Kingdom Banking Act, which is what we are doing to comply with Community law, then we do not think that it necessarily follows and we do not think that we ought to remove the possibility of Gibraltarian building societies. Simply to say, "Well, look, they have got a choice of either becoming part of the Banking sector under the Financial Services Commission or winding up". Well of course the one that wants to wind up, I do not think anybody can stop them winding up if that is what they want to do. We are only talking about one or two building societies in Gibraltar, no more than that. I am not sure whether there are still two left or one.

Independent of the overall view that we have taken on all the measures dealing with financial services, of which we had already given an indication in the mutual assistance directive when the Bill on that subject was brought to the House, that we said we thought we ought to call it a day and get the whole business sorted out because we do not think that it is clear and we do not think that it is not subject to challenge. Independent of that, which we will not be repeating in every Bill because there is no point in repeating this same argument, there is a specific concern about the fact that we will be doing away with the concept of a building society as an independent entity albeit meeting prudential standards as a credit institution primarily for the protection of its depositors. In fact, in the case of the building society it follows that at least the one that is in existence which has got a wider sort of customer base, follows the same kind of mutual structure in the way that its rules operate, in that everybody that has got a mortgage with their local building society is actually a member of the building society. Presumably, those members will have something to say on whether they want to be dissolved or not dissolved.

HON P C MONTEGRIFFO:

Mr Speaker, the hon Member is wrong, I think the hon Member is quite wrong. He has just not understood some aspects of the legislation and not taken into account, frankly, the realities of the Gibraltar marketplace. It is true that in the UK they have elected to keep building societies registered under a separate piece of legislation but that is because in the UK it is a huge building societies industry which therefore made it practical, as far as the UK was concerned, to keep the statutory regime for the way they are organised, separate whilst in Gibraltar, frankly, it was just not a practical proposition. It would in theory have been possible to

have amended the Building Societies Ordinance and introduce into the Building Societies Ordinance the whole element of banking legislation. In theory there would have been a possibility, Mr Speaker, but in terms of practical considerations there is just absolutely no benefit to it. We are not abolishing societies as the concept is defined in terms as it is understood of a credit institution. Building societies are required to meet prudential and supervisory and solvency margins. At least in the future apart from the grandfathering provisions which meet credit institutions there is no question about a regime being allowed to exist in other Member States that Gibraltar is doing away with here. That is not the case at all. Building societies are required to match credit institution levels, that is the same here as in Britain as in other parts of the European Union. The size of the building societies industry in Gibraltar militates towards rationalising the basis on which they are regulated and that is exactly what the legislation seeks to do. It would be entirely possible for somebody tomorrow to incorporate a company, call it a building society, comply with the requirements of the Banking Ordinance which are basically the requirements of the credit institutions within the European Community and that possibility is as open today here as anywhere else. In fact it must be said, Mr Speaker, that the likelihood of a Gibraltar building society or a Gibraltar bank are pretty remote, that is the reality. The reality is that there was one Gibraltar bank historically that I am aware of that as the House knows was sold out to a non-Gibraltar entity because of the nature of Gibraltar's economy and the nature of capital access that we have to capital the ability for a Gibraltar credit institution, let us use that phrase, to be established out of Gibraltar capital, of Gibraltar resources is probably quite limited. It is not a real part of the business that we are seeking to develop. It could happen in the future but it is not a likely event and the priority is to bring all credit institutions into line with EU requirements for the wider purpose of passporting which I know hon Members now do not share although a lot of the time they certainly spent in Government was pushing, rightly so in my view, the benefits of passporting and most of the insurance legislation was indeed drafted by the last administration but that is a view they now seek to take. The priority is to get passporting in banking soon and we think that we are doing everything necessary to protect Gibraltar interests in this area.

Question put. The House voted.

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

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 BANKING (AUDITORS AND INFORMATION) ORDINANCE 1997

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to give effect in Gibraltar to amendments made by the European Parliament and Council Directive 95/26/EC to Directive 77/780/EEC in the field of credit institutions with a view to reinforcing prudential supervision, to make corresponding provision with respect to the disclosure of information relating to other authorised institutions, within the meaning of the Banking Ordinance 1992, and to amend the provisions of that Ordinance relating to obtaining information and the production of documents 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 principal purpose of this Bill is to give effect to certain provisions of Council Directive 95/26/EC. This directive is usually referred to as the "Post BCCI Directive" and this is the way I shall refer to it in this contribution. Other provisions of the post BCCI directive are covered in the Insurance Companies Prudential Supervision Regulations which have been published, the Financial Services Bill, before the House, and the Financial Institutions Prudential Supervision Bill, also before the House. The Bill, however, also deals with auditing matters relating to institutions licensed within the Banking Ordinance. Section 2 extends the existing section 46 of the Banking Ordinance which exempts auditors from civil liability for passing on information to the Banking Supervisor or Commissioner. Sub-section (1) alters "licensee" to "authorised institution" and thereby extends section 46 to cover auditors of recognised institutions as well as auditors of licensees. Section 3 of the Bill introduces a new section to follow section 48 of the Banking Ordinance. The new section is about licensees alone and does not derive from a Community obligation. The section requires auditors of licensees and bodies with which they are linked by control to notify the Banking Commissioner of information in circumstances falling within sub-section (3). Broadly, this information, Mr Speaker, is information that would suggest to the Commissioner that there might be some reason for him or her to have to intervene. In effect, although the new section does not arise from a Community obligation, it makes provision in relation to auditors of licensees and bodies with which they are linked by control which corresponds to provisions made in respect of investment firms by other sections in the Financial Services Bill also before this House later on today. This is a provision, again required to match the UK standards. Section 4 replaces the original section 16 of the Banking Ordinance with a more extensive provision which gives powers to authorised officers including the Commissioner of Banking, and to the Banking Supervisor, to obtain directly or through a person appointed to carry out an investigation, information about and documents relating to persons licensed in Gibraltar or authorised elsewhere in Europe to carry on deposit-taking business and persons associated with those who are so licensed and authorised. Section 5 follows and is a consequential change made to the previous section. Finally, sections 6 and 7 and the Schedule to the Bill give effect to the requirements about confidentiality of information in the field covered by the Commissioner which results from the amendments previously described. These confidentiality provisions are therefore derived from and consistent with the EU requirements. I commend the Bill to the House.

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

Question put. The House voted.

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

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 FINANCIAL INSTITUTIONS (PRUDENTIAL SUPERVISION)
ORDINANCE 1997**

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to give effect in Gibraltar to amendments made by the European Parliament and Council Directive 95/26/EC to Directives 77/780/EEC and 89/646/EEC in the field of credit institutions and Directive 85/611/EEC in the field of undertakings for collective investments in transferable securities, with a view to reinforcing prudential supervision 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, at the risk of boring the House with what is a matter of not great interest to Opposition Members, in view of the attitude they have taken, I shall nonetheless run through some of the major provisions, if nothing else for the record. The Bill again is to give effect to certain provisions of the post-BCCI directive and I have mentioned the other transposition mechanisms that have been brought into place for the purpose of completing that transposition. Section 2, together with Schedule 1 again in this legislation introduces the concept of closely linked for the purposes of this legislation, in other words the concept that where certain institutions are closely linked with other parties that certain supervisory and prudential regulation consequences flow. Section 3 introduces amendments into the Banking Ordinance to ensure that a licence under the Ordinance may be refused or cancelled if the Commissioner of Banking views that such close links are such to prevent the effective supervision of an institution. The amendments to the Banking Ordinance in Section 4 complete the link between that Ordinance and this Bill. Section 5 and Schedule 2 give effect to the requirements about confidentiality of information in the field of UCITS similar to what has been passed in the legislation in the last Bill we dealt with, again arising specifically from the post-BCCI requirements. Section 6 requires auditors of UCITS to notify the authority about information in circumstances falling within the sub-sections of section 6. Broadly speaking, again, this is information which the auditors believe might be of value to the regulator in deciding whether any regulatory action should be taken in relation to such an institution. I commend the Bill to the House.

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

Question put. The House voted.

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

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 DEPOSIT GUARANTEE SCHEME ORDINANCE 1977

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar European Parliament and Council Directive 94/19/EC on deposit guarantee schemes 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, as we saw with the BCCI collapse, depositors often face losses when there is a collapse of a particular banking institution. For depositors of small amounts, in particular, the loss can be disastrous. If they are able to recover any of the money at all they may often have to wait a long time for it and during that time the liquidators have to trace missing money and sort out how much depositors are entitled to. Deposit guarantee schemes are designed to do two things: firstly, to cut out the wait to make sure the depositors do not have to wait for their money and also, of course, to guarantee certain minimum payments to them. In the case of the Gibraltar Deposit Scheme currently before the House the Scheme proposes that the amount of repayment to a depositor would be 90 per cent of the deposit or £18,000 whichever is the higher. It therefore would protect consumers and in particular small depositors against the possibility of a bank collapse. The adoption of the Scheme in Gibraltar again follows requirements set out in the European Union relevant directives on this matter. The Scheme is also an

essential part to getting passporting in banking services. In drafting the Bill we have taken close account of the views expressed by the industry. There has been extensive consultation with the banking sector and although the Bill is technical I will try to highlight some of the salient points and perhaps also indicate to the House that we have managed to transpose the requirements of the Bill in a much less voluminous way than in the UK. Our Bill runs about 30 pages and in the UK the equivalent runs in fact into several hundreds of pages.

As Members will note the Bill sets out two Funds. There will be an administration fund to which banks are required to contribute annual amounts and that fund will effectively be used simply for the running of the scheme and there will be also a default fund, a fund that will only become operational and to which banks will only contribute when there is a default, hopefully never in the case of Gibraltar, if there were to be a default by one particular banking institution. The actual scheme will be run by a Gibraltar Deposit Guarantee Board which will be appointed by the Minister for Trade and Industry with the approval of the Financial Services Commission. The way the scheme would work is that in the event of a banking default the Board will impose a levy on the remaining participants, in terms of the remaining banks in Gibraltar, to meet the cost of repaying the deposits. Unlike the system in the UK which provides for a permanent fund which is topped up if required, we have decided, as I indicated earlier, not to keep a permanent fund which we feel would be too onerous on the industry but simply to call upon the money in the event of any collapse taking place. The Board is required under the Ordinance to be in a position to repay depositors within three months of the collapse of any banking institution. Therefore, provided the depositor has properly established his claim, he will get his money very quickly. The remainder of the Bill deals with co-operation with other authorities operating similar schemes within the EEA. I should draw the House's attention to one important provision. Section 24 states that a participant must inform depositors of the fact that he is a member of the scheme but he cannot use that fact as part of its advertising. Again, this is consumer protection. Depositors have a right to know that their deposit is protected but they should not be persuaded into depositing money in a bank by the claim or suggestion that that particular bank is a member of a scheme which confers greater benefits than any other bank in Gibraltar could provide. Whilst this is driven by banking passporting requirements, it is nonetheless, in my view, and the Government's view, of interest and of importance for domestic consumers and it is a significant

contribution in the area of consumer protection for financial services and brings Gibraltar into line with other large banking sectors that have had deposit guarantee schemes for some time.

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

Question put. The House voted.

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

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 FINANCIAL SERVICES ORDINANCE 1997

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar Council Directive 93/22/EEC on investment services and in the securities field, as amended by the European Parliament and Council Directive 95/26/EC, and to provisions of Council Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions, to make further provisions about the functions of the Authority, within the meaning of the Financial Services Ordinance 1989, and to amend that 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, again this is a highly technical Bill and in view of the position adopted by the Opposition my original intention of perhaps taking Members through the more important sections may be a wasted exercise, I will, however, of course, highlight the basic purpose of the Bill. The Bill seeks to comply with the requirements of what is usually called the Investment Services Directive, the ISD, and it sets up a system for authorisation of investment firms both the ones that are based in Gibraltar and those that would be passporting into Gibraltar. Essentially, what it does is that it provides the regime similar to what has been done in insurance and what we have just done in banking for Gibraltar investment firms to passport out and for other EEA institutions to passport in. It is essentially the first and probably most important step with regard to investment services passporting. We are keen to move on quickly so that we can press to complete the regulatory requirements necessary to get investment passporting also in place. There are various other amendments introduced to the Financial Services Ordinance by this Bill that go beyond the requirements of the Investment Services Directive, the ISD. There are various provisions which tie up and improve the regulatory regime in respect of licensees generally under the Financial Services Ordinance that are not dealt with by the directive. Those provisions are contained primarily in part 8 of the Ordinance and in sections 30 to 37. I will not be seeking the third reading of this Bill at this meeting.

There are some representations which are now being made to the Government with regard to the second aspect of the Bill that I have highlighted, namely that part of the Bill that does not refer to ISD transposition but refers to improvement of regulation of licensees outside the concept of the directive. Although on first perusal of these I do not think the fears expressed are of significance, nonetheless since this particular legislation is not important for banking passporting, the Government are happy to defer third reading stage until we have had a chance to discuss those concerns with those sectors of the industry that have approached the Government. As I have mentioned on other occasions, the Government gives importance to obtaining the three passporting badges as soon as possible to therefore allow us to concentrate on making sure that those badges actually deliver practical business. That is the reason that we are speeding ahead with this transposition,

subject to the delay that I have now indicated to Members, but this is an important piece of legislation in being the cornerstone of the third passporting badge in an area of financial services where I think it is generally recognised there is great potential for Gibraltar, much more than, for example, would be the case with banking. 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, in this Bill, and I am glad that the third reading today is being held back until representations can be made, we would have had a double no. No because of the EU transposition and no on part 8 because it has got nothing to do with the transposition of the EU Directive as the hon Member has pointed out and in fact it is introducing, as the industry has put it, more regulations in an area where there is no regulation elsewhere within Europe or the UK. Principally, the sections that allow for any conditions to be imposed by the authority and the requirements of the Ordinance and any regulations that may be put into place after it, I assume those are the representations that have been made to the Minister responsible. Indeed, on a number of other areas relating to advertising, if we are going to have transparency well then let us continue the advertising, let us not take that provision out. There is also another one in respect of the time that the Commission should respond to any application by and the change in the wording basically has the effect that applicants can be kept on a limb for as long as the Commissioner feels they wish to because they only have to respond within six months of them being satisfied that the application is properly made and therefore get into a dispute with potential as to whether they are satisfied or not. In any event, I am grateful that the Bill is not going through the third reading today in order to allow representations of the industry to be made.

HON P C MONTEGRIFFO:

Mr Speaker, as I have explained, that part of the Ordinance that is not dealing with the ISD transposition has been the subject of representations made by ATCOM to the Government and it is on the basis of those representations the Government are prepared to defer the third reading. But just to take up the hon Member's example, I would not want to prejudge either the representations made in more detail but the point is worth highlighting just to show the extent to which we are talking about minutiae here. The current Financial

Services Ordinance requires the Financial Services Commissioner to reply to an application within six months of the application being made. That seems sensible. The only thing this does is to say that before the six months start ticking the application has to be deemed to be a full application because there have been circumstances, so we are informed, where an application is made, but an incomplete application is made and the Commission takes the view, I think at first sight, subject to representations, that ATCOM might make quite reasonably that before it is required to respond it should respond to an application which is a full and complete application, an application properly constructed. That is the sort of issue that we are talking about and which I am happy to sit down with ATCOM and discuss with them further.

Question put. The House voted.

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

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

The House recessed at 1.00 pm.

The House resumed at 3.00 pm.

THE EMPLOYMENT (EEA CERTIFICATES OF EXPERIENCE) ORDINANCE
1997

HON J J NETTO:

I have the honour to move that a Bill for an Ordinance for certificates of experience for persons pursuing certain professions to provide for recognition thereof in EEA States and thereby to transpose into the law of Gibraltar Council Directives, 63/607/EEC, 64/222/EEC, 64/223/EEC, 64/224/EEC, 64/427/EEC, 64/428/EEC, 64/429/EEC, 65/264/EEC, 66/162/EEC, 67/43/EEC, 68/363/EEC, 68/364/EEC, 68/365/EEC, 68/366/EEC, 68/367/EEC, 68/369/EEC, 69/82/EEC, 70/451/EEC, 70/522/EEC, 70/523/EEC, 74/556/EEC, 74/557/EEC, 75/369/EEC, 82/470/EEC and 82/489/EEC be read a first time.

Question put. Agreed to.

SECOND READING

HON J NETTO:

Hon Members can see we are actually talking of a small matter of 25 directives, some going back over 30 years. Accordingly, we are covering a very wide diversity of professions from one as common in Gibraltar as hairdressing to the less likely such as silk production. Naturally, in all cases evidence of training received will have to be produced supporting the application. 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 have nothing much to say except that we are abstaining on it. We do not know why this is coming now or why there is a need for these certificates going back to 1963 but presumably the Government have been advised that it needs to be done irrespective of whether we have miners or printmakers or anything else.

Question put. The House voted.

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

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

The Bill was read a second time.

HON J J NETTO:

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 Social Security (Closed Long-Term Benefits Scheme) Ordinance 1996 (Amendment) Bill 1997;
2. The Timeshare Bill 1997;
3. The Wireless Telegraphy Bill (Amendment) Bill 1997;
4. The Banking (Amendment) Bill 1997;
5. The Banking (Extension to Building Societies) Bill 1997;
6. The Banking (Auditors and Information) Bill 1997;
7. The Financial Institutions (Prudential Supervision) Bill 1997;
8. The Deposit Guarantee Scheme Bill 1997;
9. The Employment (EEA Certificates of Experience) Bill 1997.

THE SOCIAL SECURITY (CLOSED LONG-TERM BENEFITS AND SCHEME) ORDINANCE 1996 (AMENDMENT) BILL 1997

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

THE TIMESHARE BILL 1997

Clauses 1 to 22, Schedules 1 and 2 and the Long Title were agreed to and stood part of the Bill.

THE WIRELESS TELEGRAPHY ORDINANCE (AMENDMENT) BILL 1997

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

Clause 2

HON CHIEF MINISTER:

Mr Chairman, in respect of the previous Bill to which I would like to return, there was an amendment that I had to move to the Social Security (Closed Long-Term Benefits and Scheme) Ordinance of which I gave notice during the debate on the second reading. Perhaps we could return to that one?

MR CHAIRMAN:

I think the best way to do it would be to start from the very beginning again.

HON CHIEF MINISTER:

Whatever the House wants..... we can go backwards and forwards as the Leader of the Opposition says. Perhaps now that we have started on this other Bill perhaps we should finish that one and then come back to the Social Security one.

MR CHAIRMAN:

All right, we are in the Wireless Telegraphy Ordinance.

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

Clause 2

HON P C MONTEGRIFFO:

Mr Chairman, in section 2 I have given notice of four amendments. In sub-section 2(6), in the penultimate line of the new 12(A) substitute the word "time" for "fine". In sub-section 2(7), second line of new 15(2)(ii) substitute "(ii)" for "(i)". In sub-section 2(7), again third line of new 15(6) insert the word "the" after the word "to" so that would read "apparatus to the Wireless Officer" and, lastly, section 2(7), fourth line of new 15(7) substitute the word "ill" for the word "in", therefore reading "consisting in the use of".

Clauses 2(1) to 2(7), as amended, were agreed to and stood part of the Bill.

Clause 2(8)

HON J C PEREZ:

I think the Opposition would want to abstain on sub-section (8) because we do not know what the constitutional implications of that are on two areas, one is on the power of the Minister who appoints the Wireless and Telegraphy Officer, not on the powers to make regulations and the other more important one is that there is a clause in the Ordinance that where the Governor today has the power to control and take over the transmission and reception of messages in a state of emergency and that power is being passed on to the Minister and the actual definition of what an emergency is is left to the Minister to decide as well. We actually do not know what the constitutional position or implication of that might be so we would rather abstain on sub-clause (8).

HON CHIEF MINISTER:

Let us be clear Mr Chairman, I think the hon Member is making a couple of different points. He is saying that the power to do two things rests on the same person - to decide what is an emergency.....

HON J C PEREZ:

No, no, what I am saying is that at the moment the Governor decides what is an emergency and takes the measures to take over the system, the telecommunications etc. That power, both of defining what is the emergency and of taking over the system is being transferred to the Minister and I am not sure what the implications constitutionally of that would be.

HON CHIEF MINISTER:

Mr Chairman, I am sure His Excellency the Governor will be delighted that he has been able to recruit the support of the Opposition in preserving his constitutional rights and powers in Gibraltar. It was not that long ago that the Opposition Members were urging the Government to do the very opposite and indeed were doing so themselves. I do not see why the hon Member should feel less comfortable with his Minister doing something than with the Governor doing something. In so far as the Constitution is concerned, I think the hon Member can safely leave others to decide what they are willing to accept or not accept. The only people who insist on

enforcing the Gibraltar Constitution to the letter are the Spaniards, not the.....

HON J C PEREZ:

I will tell the hon Member what the difference is, the difference is that we would be supporting most of the powers that are being transferred to the Minister there except that [Interruption] frankly, I do not think that the Constitution gives powers to a Minister even in the United Kingdom to take over the control of the telecommunications and radio messages and everything else in a state of emergency. [Interruption] Frankly, it is not a question of being happy or not. We are here as legislators to take seriously what we do in legislation and since we are not sure what the constitutional position is we are only going to vote against it. We are going to abstain because there is no clarification of whether there is a constitutional implication there. Generally, we support the whole Bill and we will be voting in favour of the Bill but, frankly, that clause which I am sure has been an oversight on their behalf because I am sure that even Mr Montegriffo did not know that he was giving himself that power, is something that we are going to abstain on.

HON P C MONTEGRIFFO:

Mr Chairman, what I know is the power that we are getting. This is as I said in my contribution, the power to effectively make the required decisions as currently required under the Wireless Telegraphy Ordinance which are currently all now in the hands of the Governor and which this provision has the effect of transferring to the Minister. It is as simple as that and the Bill has been drafted without the position or comment on that basis and as far as the Government are concerned it is perfectly legitimate for a transfer of power to take place on that basis. If the hon Member has reservations about constitutional niceties that is a matter for him. It just seems out of character, frankly, bearing in mind their general political trajectory for them to nitpick on a matter of this nature when their general trajectory is, "The constitution is out of date and frankly we should be sitting beside Chancellor Kohl....."

HON J C PEREZ:

It is only out of character because of the perception the Government have had of us. We are saying generally that we agree with all the powers that are being transferred to the Minister in making regulations and in everything else, except defining what a state of emergency is and

then having the power to take over the whole of the telecommunications in Gibraltar.

HON CHIEF MINISTER:

Mr Chairman, if he prefers that the Deputy Governor should exercise that, all the hon Member is demonstrating is that he has not quite managed to shake off the Colonial yolk that he preaches to other people about. Why do they think it is all right for the Governor to decide to take over the communications network and not the Minister who is democratically elected by the people. It is an extraordinary position, of all people, somebody sitting in that party to take.

HON J C PEREZ:

It is a responsible one.

HON J J BOSSANO:

What is obvious in the proceedings of the House is that the only function that the Opposition can carry out is simply to say, "yes" or "no", without comment, without seeking explanations or without making observations. There is obviously in this House a situation where even the slightest doubt about a possible oversight on something which appears to be that the constitutional powers of declaring a state of emergency in Gibraltar should not be in the hands of a politician, or if it should be that it is a major issue which should not be slipped in but be debated, whether that is what is happening or not, the fact that it might be, is a perfectly legitimate thing to raise from the Opposition benches in a parliament without invoking the wrath of Government Members comparing us to the Spaniards as the only people.... [Interruption] Look, if the only way the Member can shake off his "palomo" past is to constantly point a finger at us it will not work. He will go to the grave with it.

HON CHIEF MINISTER:

Mr Chairman, unless the hon Member thinks that his political unpopularity in Gibraltar has descended to such depths that a "palomo" can defeat him from office, is that the hon Member's view? Because, frankly, if he has reached the depth in public esteem that even a "palomo" can unseat him from No. 6 Convent Place I am surprised that he has not collapsed into a nervous breakdown already. The reality is not that the hon Member has got a "palomo" past, Mr Chairman, the reality is that the people of Gibraltar have now accepted that when he has

tried to suggest that I have had a "palomo" past he has been lying through his teeth, that is what my election into office recognises and the hon Member is simply deluding himself, he is the only person in Gibraltar who continues to believe that and the more he repeats it in the face of the fact that nobody else believes it he is simply commenting on himself, not on myself. I would just ask the following question to the hon Mr Perez, "Who does he think in places that are not colonies decides when there is a public emergency?"

HON A ISOLA:

Mr Chairman, frankly to have heard all we have heard in the last 15 minutes on a Bill which the Opposition is supporting and voting in favour, it is not a disputed Bill, on one section, a small section where clarification is sought as to whether the position is legal or not, because of the constitution, nothing to do with niceties, whether it is within or out of the constitution, we seek clarification, that is all and the hon Member has suggested that we will be abstaining because we are not clear. Is that what deserves the outburst we have got from the Government?

HON CHIEF MINISTER:

Yes it is, with the greatest of respect, it is more than justified, Mr Chairman, because during the last eight years, and I can think of any number of legislations, the one that comes immediately to mind is shipping registries, in respect of numerous Ordinances they have done exactly this thing in any number of areas which raise exactly the same constitutional position.

HON J J BOSSANO:

Mr Chairman, if what we have to do is make a total nonsense of the role that we have to play in this House, then we will do it, from now on we will simply not bother to give explanations or seek explanations but simply concentrate on making our own minds about what we think it means and voting accordingly. The whole purpose of meeting in the House of Assembly, the whole purpose that the Government in accordance with their policy have for bringing things here, presumably is so that we can ask questions and get answers, not ask questions and get insults and that is what we get and if the Chief Minister wants to insult me, then the place to do it is out there and then I am not bound by any limitations of what I do to people who insult me. The only point that we are making is not that we do not support the fact that the role within defined domestic matters should be a Minister. The Chief Minister is quite right, for eight

years and before eight years, before he was here, the position was that whenever the powers were there for the "Governor" the Governor meant the Government in a defined domestic matter. The Governor in a state of emergency taking over the telecommunications did not mean the elected Government because internal security and defence are not defined domestic matters. If, in fact, the Government says to us today, "Yes, we have now decided to extend the role of the elected Government into defence and internal security, and that is what we are doing here", that is fine, that is the explanation but if that is not the explanation, maybe the explanation is that we have mis-read the consequence of that but it does not call for the kind of row that has developed over a perfectly innocent question saying the reason why we are abstaining on (8) is because out of the things that (8) is changing a sub-section of a section in a whole Bill, two or three words have raised doubts which we feel we need explained. Either there is an explanation for those doubts or there is not an explanation. If there is no explanation then we will abstain. If there is an explanation that satisfies us then we vote in favour. That is all that the Member for the Opposition speaking for the Bill has said, why should it then produce the kind of reaction we have had. It makes a complete nonsense of the role that we are supposed to be carrying out in this House.

HON E M BRITTO:

Mr Chairman, I will tell the House why it has raised temperatures on the Government side because that is not the only thing that has been said by the Opposition. It is the underlying implication of what has been said. I will tell the House what the underlying implication is because it has been said more than once and that is that the spectre of a Minister being able to create an emergency and then giving himself powers to conduct telecommunications which implies that a Minister would then be guilty of malpractice or would be guilty of abuse. [HON J C PEREZ: Nonsense] It is not absolute nonsense as the hon Member is saying because that is exactly what has been said by the Opposition. "We are not certain what is meant by a Minister being able to declare an emergency and then being able....." It is a question of the way they have read the clause and the way they have interpreted it because that is what they have said not what I have said and they have said, "That a Minister can create an emergency." That is what has been said from the Opposition benches, that a Minister can create an emergency and then take over telecommunications and that is what is worrying the Opposition Members and that is what I certainly take objection to.

Question put. The House voted.

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

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

Clause 2(8) stood part of the Bill.

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

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

THE SOCIAL SECURITY (CLOSED LONG-TERM BENEFITS AND SCHEME) ORDINANCE 1996 (AMENDMENT) BILL 1997

HON CHIEF MINISTER:

Mr Chairman on the basis that we all still agree that social security is a defined domestic matter and that it is OK for Ministers to make decisions in relation to pensions even though not emergencies, the amendment that I would like to bring Mr Chairman is by adding in clause 2 of the Bill the following sub-clause after sub-clause 7(b)(7). There is written notice of this Mr Chairman, so it is just really adding at the end of the Bill a new (8) which would read, "Nothing in this section shall entitle any person to claim any payment or benefit to which this section applies, in respect of any period prior to the 1st January 1998." Mr Chairman, that is the amendment which has been thought prudent by the people engaged in working this legislation because they think that it is open to doubt whether allowing people to now make up their arrears may or may not give them the right to claim retrospectively benefits that they have received at a reduced rate because they had short arrears records contributions and this simply makes it clear that one gets the opportunity to pay ones arrears now, that entitles one to a higher pension but only from this date,

one cannot claim retrospective increases in pension. That is the objective of the amendment.

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

THE BANKING (AMENDMENT) BILL 1997

Clauses 1 to 3

The House voted.

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

Clauses 1 to 3 stood part of the Bill.

Clause 4

HON P C MONTEGRIFFO:

Mr Chairman, I beg to give notice that in clause 4, at the beginning of section 4, there is a (1) as if suggesting there was going to be a subsection (2) which of course there is not, so as I have given notice we are seeking the deletion of the subsection (1).

Clause 4, as amended, stood part of the Bill.

Clause 5 to 12, the Schedule and the Long Title

Question put. The House voted.

For the Ayes: The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday

The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon R R Rhoda
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

Clauses 5 to 12, the Schedule and the Long Title stood part of the Bill.

THE BANKING (EXTENSION TO BUILDING SOCIETIES) BILL 1997

Clauses 1 to 7, the Schedule and the Long Title

Question put. The House voted.

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

Clauses 1 to 7, the Schedule and the Long Title stood part of the Bill.

THE BANKING (AUDITORS AND INFORMATION) BILL 1997

Clauses 1 to 7, the Schedule and the Long Title

Question put. The House voted.

For the Ayes: The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana

The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon R R Rhoda
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

Clauses 1 to 7, the Schedule and the Long Title stood part of the Bill.

THE FINANCIAL INSTITUTIONS (PRUDENTIAL SUPERVISION) BILL 1997

Clauses 1 to 6, Schedules 1 and 2 and the Long Title

Question put. The House voted.

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

Clauses 1 to 6, Schedules 1 and 2 and the Long Title stood part of the Bill.

THE DEPOSIT GUARANTEE SCHEME BILL 1997

Clauses 1 to 29, Schedules 1 to 3 and the Long Title

Question put. The House voted.

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

Clauses 1 to 29, Schedules 1 to 3 and the Long Title stood part of the Bill.

THE EMPLOYMENT (EEA CERTIFICATES OF EXPERIENCE) BILL 1997

HON J L BALDACHINO:

Mr Chairman, I do not know if I am allowed to ask, but just for clarification.....

MR CHAIRMAN:

You are allowed to say anything so long as I am here.

HON J L BALDACHINO:

Thank you very much. Is there any specific reason why the commencement date should be 21 days after the Governor's assent? Is there any reason for that?

HON CHIEF MINISTER:

Mr Chairman, I think it has absolutely no significance. There are new draftsmen working on these things and different draftsmen have different techniques for commencing dates. That might easily have said on a date to be fixed by the Governor or the Government or might even have specified a day or indeed no day in which case it becomes immediately applicable when it receives the Governor's assent. There is no particular reason why this particular formula is present in this particular piece of legislation.

Clauses 1 to 5, Schedules 1 and 2 and the Long Title

Question put. The House voted.

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

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

Clauses 1 to 5, Schedules 1 and 2 and the Long Title stood part of the Bill.

THIRD READING

HON ATTORNEY-GENERAL:

Mr Chairman, I have the honour to report that the Social Security (Closed Long-Term Benefits and Scheme) Ordinance 1996 (Amendment) Bill 1997; the Timeshare Bill 1997; the Wireless Telegraphy Ordinance (Amendment) Bill 1997; the Banking (Amendment) Bill 1997; the Banking (Extension to Building Societies) Bill 1997; the Banking (Auditors and Information) Bill 1997; the Financial Institutions (Prudential Supervision) Bill 1997; the Deposit Guarantee Scheme Bill 1997; and the Employment (EEA Certificates of Experience) Bill 1997, have been considered in Committee and agreed to with amendments and I now move that they be read a third time and passed.

Question put.

The Social Security (Closed Long-Term Benefits and Scheme) Ordinance 1996 (Amendment) Bill 1997; the Timeshare Bill 1997 and the Wireless Telegraphy Ordinance (Amendment) Bill 1997; were agreed to and read a third time and passed.

The Banking (Amendment) Bill 1997; the Banking (Extension to Building Societies) Bill 1997; the Banking (Auditors and Information) Bill 1997; the Financial Institutions

(Prudential Supervision) Bill 1997; and the Deposit Guarantee Scheme Bill 1997.

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

The Bills were read a third time and passed.

The Employment (EEA Certificates of Experience) Bill 1997.

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

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

The Bill was read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that this House do now adjourn to Monday 19th January 1998 at 3.00 pm.

Question put. Agreed to.

The adjournment of the House was taken at 4.15 pm on Friday 19th December 1997.

MONDAY 19TH JANUARY 1998

The House resumed at 3.00 pm.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana - Chief Minister
The Hon P C Montegriffo - Minister for Trade and Industry
The Hon Dr B A Linares - Minister for Education, the
Disabled, Youth and Consumer Affairs
The Hon Lt-Col E M Britto OBE, ED - Minister for
Government Services and Sport
The Hon J J Holliday - Minister for Tourism and Transport
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 R R Rhoda - 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

CONDOLENCES

MR SPEAKER:

Before starting the proceedings of the House I am quite sure that you will all join with me in expressing our condolences to the Hon Miss Marie Montegriffo on the death of her father. I knew him well. All I can say about him is, he was a good man.

HON CHIEF MINISTER:

Although I suspect most Members of the Government have conveyed their condolences to the hon Lady privately, I think for the record in Hansard I would like to associate myself and the Government with Mr Speaker's words of condolences. I think it is possible to say that more than he was just a good man I think he was a good and well respected leading citizen whose passing away I think will be missed by many outside his own family.

HON J J BOSSANO:

I would like, on behalf of our Member and her family, to place on record our appreciation for those words. He was in fact a Gibraltarian that had been linked to people in the political field for many years, with the GSLP and before the GSLP and therefore I think he was a man who had earned the affection and friendship of many people in Gibraltar and that was reflected with his passing away and with the response that the family had. I am grateful that Members have chosen this opportunity to express their sentiments.

HON MISS M I MONTEGRIFFO:

I would just like to say a few words. I am very grateful for the kind words that you have expressed, also the Chief Minister and the Leader of the Opposition on behalf of myself and my family. Thank you very much.

DOCUMENTS LAID

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

Question put. Agreed to.

The Hon the Financial and Development Secretary laid on the table the Barclays Bank Supplemental Loan Agreement.

Ordered to lie.

BILLS

FIRST AND SECOND READING

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

Question put. Agreed to.

THE MAINTENANCE ORDINANCE (AMENDMENT) ORDINANCE

HON CHIEF MINISTER:

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

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. This Bill together with the next one on the Order Paper, which is the Domestic Violence and Matrimonial Proceedings Bill, is a Bill which will not be unfamiliar to Opposition Members given that when they were in Government they brought these two Bills in slightly different form to the House in 1993. They took it through the First and Second Readings but for reasons that were never disclosed, did not proceed with the Bills beyond Committee Stage and Third Reading and they never reached the statute book. These are Bills which, subject to some modifications which are contained in the Bills now before the House, received full support of the GSD when we were in Opposition in 1993 when, as I said, Opposition Members then in Government brought the Bills to the House.

Mr Speaker, the Government have consulted with a number of interested parties specifically with the Judges of the Supreme Court, with the Stipendiary Magistrate, with the Women's Aid Group, with the Probation Service, with the Marriage Care Gibraltar Counselling Service and with the Gibraltar Women's Association who have all expressed their desire to see this legislation on the statute book and therefore the Government decided to start afresh with the Bills.

Mr Speaker, the main object of this particular Bill is to provide for a party to a marriage or a cohabitee which is a term which is defined in the Bill as, "A man and a

woman living together as husband and wife even though they be not married", to make a complaint to the Magistrates' Court for an Order protecting either the complainant or a child of the family from violence or a threat of violence by the other party or for an Order prohibiting that other party from entering the matrimonial home and the matrimonial home includes the permanent residence of two cohabitees. Part VII of the Bill deals with this matter and it goes hand in hand with the provisions of the Domestic Violence Bill which is on the Order Paper for later.

Mr Speaker, this Bill goes further by making provision for a man to have the duty to provide reasonable maintenance for a woman with whom he has cohabited where he also has such a duty in respect of children of their relationship. New Section 45A provides for maintenance orders which are made in the Supreme Court to be registered in the Magistrates' Court. It thus makes it cheaper and easier for the enforcement of such orders. A number of amending clauses allow for access to the Magistrates' Court where a financial remedy is sought and the defendant has assets in Gibraltar. The Bill also deals with the question of penalties and other updating matters such as the abolition of the post of Director of Labour and Social Security from the Maintenance Ordinance. Other relatively minor matters such as substitution for the Probation Officer of a person appointed by the Government for the purposes of the legislation are also covered. In other words, there are several places in the Bill where certain powers are given to a Probation Officer and that is extended to a Probation Officer or such other person as may be appointed by the Government.

Mr Speaker, this is an important overdue legislative measure in the field of family law which I trust the House will welcome and commend given that it enjoys wide support amongst persons who work professionally in this line of activity. 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, we will be supporting this Bill as indeed the second Bill on the Supplementary Agenda. We support any move that will protect innocent persons from violence and the moves stipulated within the Bill and we unreservedly support the Bill through the passage of the House.

HON CHIEF MINISTER:

Mr Speaker, obviously there is no need for me to reply except to express satisfaction that this piece of legislation will reach the statute book by consensus and just simply to mention that at Committee Stage I will be moving two amendments, perhaps I ought to have mentioned this in my opening address but if the hon Member wants to comment again as a result of the proposed amendments I will certainly give way to him and that is, that there is a defect in the drafting of the Bill in that the penalties for breaches of maintenance orders which creates this ability to go back to the Magistrates' Court and for the magistrate to give compensation to the aggrieved party, has been limited to maintenance orders made in favour of cohabittees and of course the intention was to create a new sanctions regime for breaches of all types of maintenance orders between husbands and wives as well in favour of children, not just in favour of cohabittees. That is the principal amendment that I shall be moving.

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 later today.

Question put. Agreed to.

THE DOMESTIC VIOLENCE AND MATRIMONIAL PROCEEDINGS ORDINANCE

HON CHIEF MINISTER:

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

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, as I said earlier on the previous Bill, this is the second of a sort of package of two Bills in this general area of law that had been

before this House in 1993 and did not complete its passage. Again, it has been the subject of the same extensive process of consultation to which I referred earlier. This Bill makes provision for protection in cases of violence and it breaks new ground. It is not an amendment to existing legislation but a new Bill in its own right. One important common feature which it has with the Maintenance Ordinance (Amendment) Bill is the definition of cohabitee, a concept which is not just limited to legally married spouses but also covers common law partners, that is to say, of different sexes, it does not apply to non-heterosexual relationships. The object of this Bill is to empower the Courts to have jurisdiction providing for temporary injunctions, excluding from the matrimonial home one party to a marriage or one of the cohabittees where the court takes the view that it is in the interests of the safety of the other party or cohabitee or of a child living with that party, it is necessary to exclude the other from the home. Clause 3 deals with the subject of matrimonial injunctions. Mr Speaker, the principal provision in the Bill is to be found at Clause 3 and it provides that, "On an application to the court by a party to a marriage," - and then at the end it says that all the above applies equally to cohabittees, - "the court shall have jurisdiction to grant an injunction containing one or more of the following provisions - (a) a provision restraining the other party to the marriage from molesting the applicant; (b) a provision restraining the other party to the marriage from molesting a child living with the applicant; (c) a provision excluding the other party to the marriage from the matrimonial home or a part of the matrimonial home or from a specified area in which the matrimonial home is included; (d) a provision requiring the other party to the marriage to permit the applicant to enter and remain in the matrimonial home or a part of the matrimonial home". In other words, this Bill provides a very quick and cheap remedy to the victim either of domestic violence or threatened domestic violence but of course not limited to wives who are excluded from the matrimonial home. They will now have the ability to go straight to the Magistrates' Court which is a court that meets every morning from 10 o'clock until 5 o'clock in the afternoon. So it is a remedy that is available five days a week, almost eight or nine hours a day and obtain an order in protecting the victim of this regrettably, not unknown or rare social misbehaviour. Mr Speaker, if the court is satisfied that the complainant or children are at risk the court can decide to attach a power of arrest to the order that it makes. And if, but only if, the court has thought it fit and proper to add a power of arrest to the order which it is only able to do when the court is satisfied that there has actually been violence and that there is a risk of it

recurring or that there is a serious risk of violence, only when the court has attached a power of arrest do police officers have the power to arrest the object of the order if he should break the court's order of not molesting or not entering the matrimonial home. It is important to highlight that orders made by the court restricting one party from going to the matrimonial home has no effect on any proprietary rights of interest in the matrimonial home except, of course, the compliance with that order and orders are limited in time to three months because this is intended as interim relief pending a more permanent resolution of whatever problems or whatever substantive permanent relief the applicant may be seeking. I trust that Opposition Members will also welcome this Bill which, apart from dealing with a source of great stress and pressure to people who fall victim of this sort of behaviour, has the additional advantage of providing a remedy at a low cost, because it is available in the Magistrates' Court which is often an obstacle to the very sort of people who tend to be victims of this sort of behaviour and indeed is quick, as procedures in the Magistrates' Court can be, as opposed to procedures in the Supreme Court. Therefore people do not have to suffer the very often traumatic consequences of being at the receiving end of this intimidating behaviour because they cannot get to a court of law quickly enough. This is, I think, groundbreaking legislation in Gibraltar which I think will be a much welcome relief to those in our community who suffer regrettably at the hands of such behaviour and which has the effect of bringing the law of Gibraltar more closely into line with that in the United Kingdom and other parts of western Europe where legislation provides relief to the victims of such behaviour. 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, as I said earlier we will be supporting the Bill. There is and I think practice in that field to a limited extent at what is a very difficult time for families when they are suffering that particular stress to have the added threat or act of violence hanging over it makes the pain even worse. The relief being afforded in this Bill will have the effect of at least staying that threat or violence for a period of time which normally would lead to a more responsible attitude being taken and at the same time it does not, as the Chief Minister said, interfere with the proprietary rights of either party in respect of the matrimonial home itself. We welcome and will support the Bill.

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 later today.

Question put. Agreed to.

THE STATISTICAL RETURNS (CARRIAGE OF GOODS AND PASSENGERS BY SEA) ORDINANCE

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar Council Directive 95/64/EC on statistical returns in respect of carriage of goods and passengers by sea be read a first time.

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that the Bill be now read a second time. The object of this Bill is to implement directive 95/64/EC which requires that certain statistics should be kept in respect of the carriage by sea of goods and passengers. The directive establishes a framework for the collection of Community wide and standardised statistics on the carriage of passengers and freight by sea, both within and to and from Community ports, and on ship traffic in European parts. Clause 3 of the Bill empowers the Minister to require shipping lines or their agents, to furnish data concerning the matters which are set out in detail in the Schedule. Clause 4 provides for penalties to be incurred for failure to make the necessary terms prescribed by the legislation or for making false returns. 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 are not supporting this Bill. We have got certain reservations about the applicability in terms certainly of the question of the movement of goods given that we are outside the Customs Union and that these are statistics which show trade between the European Community and the external trading partners and we are in

that context, an external trading partner of the EU. In the directive itself there are references to maritime coastal areas in annex 4 and we note that in fact although the maritime coastal areas of the United Kingdom which have got a code which is what has to be reflected in terms of the way the statistics need to be presented, the United Kingdom is given the code 0061 and the Isle of Man 0062 and the Channel Islands 0063, Gibraltar in fact is not shown there as having a separate code. In the case of Spain, for example, it has two codes, one for the Atlantic coast and one for the Mediterranean and the South Atlantic. So in the case of Spain they have code 0111 and 0112. We do not know why we are excluded from that but in fact the directive actually provides in it the classification. Annex 5, for example, where there is the nomenclature that has to be used to designate the registry of the ship, Gibraltar is in fact shown with a different code from that of the United Kingdom and it is shown in addition to the UK, the Isle of Man and the Channel Islands. The directive says that where the country has more than one register then the code is in fact consisting of four digits as opposed to three to ensure that the subdivision of the register is coded separately. Therefore, we have, for example, in the case of Denmark 0081 for Denmark and 0082 for the Danish register that is offshore and therefore quite rightly Gibraltar registered ships would be shown with a classification that shows that where a British ship registered in Gibraltar just like it would happen with a ship registered in the Isle of Man and that applies not just to any statistics that we produce but the statistics that everybody else, including Spain, has to produce. However, we would have expected that there would be similarly a distinct classification for the maritime coastal area in which the port is located and this does not appear in the text of the directive.

We also have looked into the question of the regulation in respect of which the classification appears which is regulation 208/93 and there there is a code showing the nomenclature for external trade statistics of the Community and of the Member States. The code 006 applies to the United Kingdom, Northern Ireland, the Channel Islands and the Isle of Man but not to Gibraltar. In the annex which shows the Community codes, Gibraltar is not included. Gibraltar is however shown next to the Vatican City and Andorra and the Faroe Islands in the part of the annex which lists non-EEC countries. Therefore in the light of these reservations we are not prepared to support the Bill, certainly at this stage. I think if all the stages were not taken today then we might be willing to support it after we have gone further into it but if all the stages are going to be taken today then we will be voting against.

HON CHIEF MINISTER:

Well, Mr Speaker, without going into the merits of the observations made by the Opposition Member, I really have to say this, that the legal obligation on the part of Gibraltar to transpose EU Directives is not limited to those the content of which we like or approve of. If what the hon Member says is right or if it is a reason for Gibraltar not wanting to transpose this directive, then of course it is something that perhaps ought to have been spotted sometime before 8 December 1995 when this directive was in proposal form but once the directive was adopted in this form and the Government of Gibraltar of the day or others who might have done so, had not observed any point of the sort that the hon Member is now making, it does not provide us now, four years later, with a justification for not transposing the directive. That is not to say that I accept or for that matter reject, the potential significance or the implicit reasoning that the hon Member is attributing for the non-listing of Gibraltar in certain parts of certain annexes. The fact is that that is the directive as it is. We have now resourced an office in Brussels which gives us very early warning of all directives of this nature and we now have an opportunity which we take to make representations to Her Majesty's Government at a very early date long before a directive is actually adopted so that at least we get the opportunity to point such matters out, whether or not our representations prosper in the sense that they are reflected in alteration in the wording to the directive is, of course, another matter. But that is one of the principal reasons why we have resourced an office in Brussels. I accept that the previous Government that the Opposition Member led did not have that facility in Brussels and that, indeed, having that facility in Brussels now does not mean that we are going to spot them all or pick them all up. [Interruption] Well, we have picked many up already, I am sure he will be happy to learn. But, of course, the fact that we pick them up, as I said before, does not mean that they are resolved in our favour when we do point them out but at least we do not find ourselves in positions where we discover things that we do not like after the event. Really what I am saying to the hon Member is, that it is clear that Gibraltar has a code which is 64 in this regime for the purposes of nationality of registration of vessels and that whatever may be the significance, if any, of the point made by the hon Member does not enable us to say, "Therefore we are not going to transpose the directive". The hon Member, I know, is aware of that and all that we would be doing is inviting infraction proceedings to which it would not be a defence to say before the

European Court of Justice, "We did not transpose it because we did not have our code in annex 5".

HON J J BOSSANO:

Mr Speaker, if the Chief Minister would give way. I do not know whether this is something that is on the point of generating infraction proceedings or not but what I am saying is that if, in fact, in producing the statistics the procedure that is laid down has to identify, by reference to a code, the port of entry of the goods and there is not a code for Gibraltar then how do they propose to produce the statistics never mind anything else?

HON CHIEF MINISTER:

Mr Speaker, that of course is a different matter and as with so many other Directives of this kind the devil is in the implementation and not in the transposition. If transposing it, and in a sense we are in the same position with the telecoms liberalisation directives and regulations, that there are things that we will transpose but that we physically cannot implement because of problems which are outside our control and this will be just one such matter. Clearly if Gibraltar does not have a code we will not be able to provide the statistics, it really is as simple as that.

MR SPEAKER:

I will call on the mover to reply.

HON J J HOLLIDAY:

I do not want to say anything.

Question put. The House voted.

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

The Bill was read a second time.

HON J J HOLLIDAY:

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

Question put. Agreed to.

THE CONTROL OF TRADE IN ENDANGERED SPECIES ORDINANCE 1997

HON K AZOPARDI:

I have the honour to move that a Bill for an Ordinance to make provision for the enforcement of Council Regulation (EC) No. 338/97 on the protection of species of wild flora and fauna by regulating trade therein and of Commission Regulation (EC) No. 939/97 which implements the former regulations 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. As hon Members know Council Regulations have effect in Gibraltar automatically and do not require further transposition. The Bill before the House simply gives the relevant authorities in Gibraltar power to enforce EC Regulation 338/97, the Principal Regulation, and EC 939/97, the Subsidiary Regulation. The Principal Regulation implements in the Community the 1973 Convention on International Trade in Endangered Species of Wild Flora and Fauna, commonly known as CITES. Regulation 338/97 moreover requires further provision to be made in domestic legislation because of the provision regarding sanctions contained in Article 16 of that Regulation.

Mr Speaker, perhaps I should explain at the outset how this Ordinance, once enacted, will interact with the Endangered Species Ordinance. Both the latter Ordinance and Regulation 338/97 EC prohibits the import of certain species of wild flora and fauna without certain documentation. But the species listed in the Regulation and in the Ordinance do not coincide. There would be

little sense, clearly, in having separate regimes applying to the same species. To avoid any overlap or conflict between the two, the proposed Ordinance substitutes a new Schedule 1 in the Endangered Species Ordinance for the current Schedule 1 of that Ordinance. This has the effect of excluding the species provided or protected by the CITES Regulation whilst at the same time also covering an extended endangered species which have not been covered by the Endangered Species Ordinance to date and are not covered by the Regulation. Hon Members should also note that it would not be possible to combine the two regimes in one Ordinance because as the Regulation is automatically law in Gibraltar, it would in fact be wrong to transpose it. It is desirable to continue to cover those species currently protected by our law which are not protected by the Regulation and so the regime already set out in the Endangered Species Ordinance should continue to apply.

Returning to the question of sanctions contained in Article 16 to which I referred earlier, the Bill contains various clauses providing for criminal offences relating to breaches of the Principal Regulation, particularly clauses 3 and 4, the former dealing with the question of false statements or information in order to obtain a permit or certificate, and the latter dealing with the misuse. Clause 6 also makes it an offence to contravene any condition or requirement of a permit or certificate. Clause 7 makes it an offence to move a live specimen listed in Annex A of 338/97 from the address specified in the permit or to keep it at a different address without prior authorisation. Whilst clause 8 creates a number of offences relating to a range of activities including the purchase and sale of specimens listed in Annex A or of specimens listed in Annex B which have been imported or acquired unlawfully. Clause 5, in turn, refers to powers of persons commissioned or authorised by the Collector of Customs to require proof of lawful importation or export of a specimen. Whilst clauses 9 and 10 make provision for powers of entry, including the power to take samples and seizure. Clause 11 provides for forfeiture of specimens upon conviction and clause 12 provides for the liability of corporations. Finally, it is clause 13 which amends the Endangered Species (Import and Export) Ordinance to avoid overlap with 338/97. The protection for some native species not protected by this Regulation is re-enacted and new protection is also extended to certain other native species. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

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

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 Maintenance Ordinance (Amendment) Bill.
- (2) The Domestic Violence and Matrimonial Proceedings Bill.
- (3) The Statistical Returns (Carriage of Goods and Passengers by Sea) Bill.
- (4) The Control of Trade in Endangered Species Bill 1997.
- (5) The European Communities (Amendment) Bill 1997.
- (6) The Financial Services Bill 1997.

THE MAINTENANCE ORDINANCE (AMENDMENT) BILL

Clause 1

HON CHIEF MINISTER:

Mr Chairman, just to add the date "1998" after the word "Ordinance" in the title.

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

Clause 2

HON CHIEF MINISTER:

Section 33, as amended by the Bill as printed before the House, would have the effect of imposing on a male the same duty to make provision for a female cohabitee as he would have in respect of his wife. In other words, it creates a common regime for common law wives as for

wives. But the Bill as originally drafted does not reciprocate in favour of men. In other words, there is not a Maintenance Ordinance in which a wife has to make provision for her husband, it is a much more narrow ground and it is only limited to circumstances in which the husband is unable to support himself by reason of age or infirmity. This simply makes the regime of cohabitee mirror the situation as it relates to husbands and wives. In other words, just as the common law wife gets the same rights as a wife, so a common law husband gets the same rights as the husband has against the wife in the existing Maintenance Ordinance. The circumstances in which a husband and therefore a male cohabitee can rely on his wife for maintenance are very much narrower than the circumstances in which a wife and a female cohabitee can rely on her husband. But still in the interests of keeping it free of sexist connotations, that is introduced in order to replicate exactly the existing provisions in favour of husbands in the Maintenance Ordinance. The amendment takes the form of inserting a new Clause 17A to the Bill.

Question put. The amendment was agreed to.

HON CHIEF MINISTER:

Still on Clause 2, Mr Chairman, and again to make this provision entirely neutral in terms of gender and also to make clause 33A consistent with the amendment that we have just discussed, the next amendment proposed is that in existing clause 2(18) it says, "Where a man fails to make reasonable maintenance", the amendment proposed is to substitute the word "man" and replace it with "cohabitee" because if the previous amendment is carried of course it would be possible that a woman should be at the receiving end of a maintenance order and therefore rather than 33A saying, "Where a man fails to provide reasonable maintenance", it would read, "Where a cohabitee fails to provide reasonable maintenance". The second amendment is in that same section, in the next line down it would then read, "Where a cohabitee fails to provide reasonable maintenance for any cohabitee under section 31(1)(e)", there we would have to add "or 33(1)(d)" which is what we would have just have inserted by the first amendment that we discussed. In other words, the obligation of a female cohabitee to make provision for her male cohabitee has been inserted by adding a new section 33(1)(d) and therefore we make a reference to that section 33(1)(d) in the new section 33A where it relates to making an application to the Court. In other words, the amendment creates the obligation to make reasonable provision and section 33 gives the person entitled to the provision the right to apply to court if that maintenance is not provided voluntarily.

Question put. The amendment was agreed to.

HON CHIEF MINISTER:

Mr Chairman, the next amendment is the one that I highlighted during the Second Reading which is that if the hon Members focus on page 4 on the bold print just above where the Bill refers to a new section 33B, it says "Maintenance order: penalty for breach of section 33A". Section 33A which is just above that deals only with maintenance orders in favour of cohabitees so that the regime that the new section 33B creates in all those following sections about what the beneficiary of a maintenance order can do if the party that has to make the payment fails to make them, if we left the references to section 33A as printed in the Bill that would have the effect of limiting that regime only to orders made under section 33A and therefore limited only to maintenance orders in favour of cohabitees. Whereas the intention is that that much quicker remedy for people who suffer the consequences of not receiving the payments that have been ordered in their favour, all of them whether one is a cohabitee or whether one is a husband or a wife or whether one is a child of the marriage, one should have this quick and cheap procedure of going to the Magistrates' Court and saying, "Mr Magistrate, an order has been made in favour of my husband or my wife or my cohabitee to make such and such payments per week. He or she has not made the payments". The Magistrate then has those powers there and the idea is that those additional powers should be available to the court in the case of non-compliance with all maintenance orders not just with maintenance orders made in favour of cohabitees. That is what the amendment achieves. It extends the provision of proposed new section 33b(1) to all maintenance orders and not to maintenance orders in favour of cohabitees which would be the effect, if we did not amend this as proposed.

Question put. The amendment was agreed to.

HON CHIEF MINISTER:

In Clause 2(30) there is in effect, Mr Chairman, what I suspect a misprint. If hon Members would turn to page 9 of the Bill, there are there those powers which in large measure overlaps some of the powers on the Domestic Violence Bill. But although the very first line of the proposed new section 69(1) says, "A cohabitee or either party to a marriage may make a complaint", the heading actually does not refer to cohabitees. The heading says, "Power of court to make orders for the protection of a party to a marriage or a child", and the amendment simply

has the effect of making that subheading read, "Powers of the court to make orders for the protection of a cohabitee or of a party to a marriage or a child of the family," which is what the substantive words underneath in the new section 69 indeed already say.

Question put. The amendment was agreed to.

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

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

THE DOMESTIC VIOLENCE AND MATRIMONIAL PROCEEDINGS BILL

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

THE STATISTICAL RETURNS (CARRIAGE OF GOODS AND PASSENGERS BY SEA) BILL

Clauses 1 and 2

The House voted:

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

Clauses 1 and 2 stood part of the Bill.

Clause 3

HON J J BOSSANO:

In clause 3 the provision is that the Minister may require, by notice in writing, the provision of information on matters set out in the Schedule to the Ordinance. The Schedule to the Ordinance appears to be

reproducing the statistical variables laid down in Annex 1 of the directive but with changes. I would like to have an explanation of the changes. Why is it, if we are implementing the directive, for example, where in the directive if we go to the Schedule it says, information in relation to the vessel deadweight and gross tonnage of vessel, the directive requires that it should be the deadweight or the gross tonnage but not both. Why do we want in Gibraltar to have to provide both if the directive says we can provide either? In the type of cargo the directive says that the information that has to be provided on cargo, for example, is the type of cargo according to the nomenclature shown in Annex II and that is exactly the same as it is in the directive but then the directive goes on to say that one also has to provide the description of the goods using the nomenclature in Annex III and we do not have to do that here in Gibraltar. There appears to be in the content of the Schedule some bits that go beyond what the directive requires and some bits that fall short of what the directive requires. Presumably the Government know why they want to do that. If they do not know then perhaps they ought to take a closer look at this instead of passing it through all its stages in one day.

HON CHIEF MINISTER:

As far as the second point that the hon Member has mentioned, I suspect that that is probably just a deficiency of proof reading. Certainly in respect of the first one, the hon Member knows that the directives are not just transcribed into law, the question is whether an additional obligation is being placed. I would accept that there is no need and certainly no desire or intention on the Government's part to impose obligations over and above those required or imposed by the directive. The Schedule in the Bill, of course, is headed, "The matters about which persons may be required to furnish returns pursuant to section 3" and I think the hon Member can assume that there will be no mandatory requirements to produce information in excess of that which is required by the directive. I suppose it is a question of good grammar. If the directive permits one to obtain information about the deadweight of.... [HON J J BOSSANO: The deadweight or gross tonnage which is 1.3 of the Schedule.] Yes, that is right. The directive says, "deadweight or gross tonnage". The Minister may specify deadweight and gross tonnage. I suppose it is arguable that the Minister can require details of both but not of only one of the two, that might be a very strict interpretation of using the word "and" there. If so, that will be something that the Minister could do under local law voluntarily even though there is no obligation imposed by the directive to obtain it. It is

interesting to note that the second item that the hon Member referred to which, in fact, relates to Annex III is not an Annex which is of the sort to which the hon Member referred in his address on the Second Reading. In other words, it is not an Annex that excludes Gibraltar, it is an Annex that simply gives numbers to different types of goods. I do not think it lends itself to a suspicious interpretation that our Bill should have conveniently excluded reference to that Annex III. If there had been a similar exclusion in respect of Annex IV which is the one where he correctly points out that Gibraltar has not been given a code, I might be tempted to join him in his suspicion that the Bill had been drafted so as to carefully avoid the consequences of that exclusion. But I do not think it is open to that interpretation in the event of this matter. It is not a particularly urgent piece of legislation, on the other hand it is my intention to bring this meeting of the House to an end.

What I would say to the hon Member, if he agrees, whether or not this Bill goes further than the directive technically requires, that it is not a particularly important or onerous matter and if he were to agree with that he might be able to support it in exchange for an undertaking that if, upon further investigation, the Government discover that there is in fact an onerous consequence to this, we would bring amending legislation to the House.

HON J J BOSSANO:

I am not trying to be difficult, I am just trying to do my job which is I think what is required of me. I have pointed out two examples but there are more. For example, in the Schedule at the end in "1.3 Information in relation to the vessel" we provide that people can be required to provide the name of the maritime transport operator or agent. That is not something that the directive makes provision for. The directive says we must give the numbers of the vessels, how many vessels there have been. We do not require the numbers of vessels, we require instead their names, that is not in the directive. There are quite a lot of things that are different, I have picked two at random. If this is not urgent it would seem to me more sensible to look at the points that we have raised rather than to have to come back, say, in the next House and bring an amending Bill to change all these things, if it is not something that is very pressing and requires to be put through all the stages because, as I say, there are infraction proceedings pending or there is a great deal of pressure to have this on the statute book. All I am trying to do is to comment on what I read in the directive and what I

read in the Bill before the House so that if in fact there has been, if it is a matter of policy and the Government choose to use the opportunity to seek information which they do not need to transmit to the EEC, that is the explanation but that does not appear to be the case. Therefore I do not understand why there are these differences. There is a lack of consistency, as far as I can tell, in that, for example, the Chief Minister is right when he says the question of Annex III has nothing to do with the point I raised in the Second Reading. The point I am making is why is it that we say the type of cargo has to be reported on using the nomenclature in Annex II and yet when we come to the description of the goods we say that we have to be given a description of the goods but not using the nomenclature in Annex III, why? Why do we require them to follow Annex II in telling us the type of cargo and not Annex III in telling us the goods? I think there is also a point in which I am not clear in relation to the whole of the statistical variables which are partly reflected in the Schedule and which is, what clause 3 of the Ordinance refers to and that is, that in the actual directive it says in Article 4 that the ports which have to make these returns are for a transitional period the ports that are handling more than two million tonnes of goods and at the end of the transitional period the port handling one million tonnes of goods. Well, we are nowhere near the one million tonnes of goods never mind the two million tonnes of goods. It then goes on to say that the ports that are not selected, that is to say, the Member States according to Article 4, have to draw up a list of their ports and then make returns only in respect of ports with this volume of business and in respect of those which are not selected from the list, summary data has to be provided in conformity with Annex VIII. I am not 100 per cent sure whether that means that only Annex VIII is what we have to comply with and that, in fact, everything else in Annex I and Annex II and so forth does not apply to us because of the fact that we are too small. It appears to suggest that but, frankly, I think a lawyer would be better equipped than me to look at this and decide whether those are the implications. But if that is indeed the case, and I am reading it as a layman, then it seems the need to do the whole directive in the way that it is being done is questionable. These are concerns which we are bringing to the attention of the Government. I think it would be a better thing to take a second look rather than to have to come back and do a lot of surgery but I leave it up to the Government to make their own mind up.

HON CHIEF MINISTER:

Mr Chairman, the hon Member may be right. I am sure he understands that the Government issued instructions to the draftpersons and the instructions are to transpose the directive strictly. The Government, at a political level, consider the Bill from a point of view of policy. In fact, Ministers of course do not sit down proof reading what are very often very long Bills to compare them to see whether a word that is an "and" in the directive has become a "nor" in the Bill and things of that nature. One proceeds on the basis that officials carry out their instructions and that they carry them out efficiently and competently and if it is in fact the case that there has been errors in the exact transposition of this directive which were the points that would fall into the first category that the hon Member dealt with, then I think of course it is important that those be corrected. Insofar as the second point that the hon Member makes, the last one that he has made about whether this directive applies to Gibraltar at all given the cargo limitation, it would have to be looked at by lawyers to see whether that means that if the port - because the United Kingdom, for example, as a country would transpose this directive notwithstanding that it has some ports that are small and some ports that are big and therefore there is a difference between the obligations to transpose, to have the law on one's statute book which is different to whether one has actually got to provide the information up to Brussels and it is that second question that depends on whether one is big or small. The hon Member knows what I mean when one exceeds the cargo threshold. Therefore what I am saying to the hon Member is that although he raises an interesting point which I am certainly going to have considered by lawyers, thinking on my feet I think that it is not necessarily correct to assume that because one does not reach the threshold that there is no obligation to transpose. I suppose that this is a less outrageous example of the ones that the hon Member used to use about why make us transpose directives about nuclear power stations and freshwater fish and freshwater rivers when we do not have them. But certainly if the effect of the directive is that not only does it not have to be complied with the same as information having to flow but if on its proper interpretation the correct interpretation of the directive is that if one has no big ports, so to speak, in one's country one does not have to even transpose the directive into one's laws then that would certainly be a good reason for not transposing the directive at all. I do not think, as I say thinking on my feet and not expecting to be held to this view, that would be the correct interpretation. But certainly given that this Bill does not raise matters of Government policy and

given that it is not one under which the Government are under, at least as far as we are aware, it is not one under which there are threats of immediate infraction proceedings, I am very happy to stand this Bill over until the next meeting of the House by which stage some of the observations that the hon Member has made will have been looked into and either the Bill modified accordingly or otherwise some explanation offered to him as to why it will not be.

HON J J BOSSANO:

Mr Chairman, can I just say, for the sake of putting the record straight, I am not suggesting that the possible interpretation of Article 4, clause 3, is that it should not be transposed. What I am saying is the text of the directive says, for ports which are not selected from the list, that is, ports with more than one million tonnes or two million tonnes for the next three years, summary data is to be provided in conformity with Annex VIII. If that means only summary data in conformity with Annex VIII then what I am saying is the correct transposition of the directive would be limited to simply what is in Annex VIII which is much less than what is here, not that there would be nothing at all to be done but that what would be required to be done would be less than we are providing. If that is the interpretation that is correct which I am not 100 per cent sure on reading it.

MR CHAIRMAN:

So consideration of the Bill will be left for another occasion. We have had the First and Second Readings.

HON CHIEF MINISTER:

Well, we have had the First and Second Readings and we are in the course of the Committee Stage and I think we are able, are we not, to simply stay, I suppose will be in judicial terms, the consideration so that when we next start we start where we left off.

MR CHAIRMAN:

The Committee Stage stayed.

THE CONTROL OF TRADE IN ENDANGERED SPECIES BILL 1997

Clauses 1 to 13, the Schedule and the Long Title were agreed to and stood part of the Bill.

THE EUROPEAN COMMUNITIES (AMENDMENT) BILL 1997

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

Clause 2

HON J J BOSSANO:

Mr Chairman, I beg to move that the Bill be amended by the addition of a new Clause to be numbered 3 and to read as follows: "3. Section 5 of the European Communities Ordinance is repealed". I have got a copy of the amendment for hon Members. The proposal in my amendment is to delete the provision in the principal Ordinance which was brought in 1972 when the European Communities Ordinance was introduced in the House and it is one to which I have referred in connection with the provisions of the Social Insurance Closed and Open Schemes when they were brought to the House which talked about the liability on the Consolidated Fund arising from Community obligations. In fact, in the United Kingdom the provisions that were put in the United Kingdom European Communities Act was not what was done in Gibraltar although at that time we were led to believe, when the Bill was introduced in the House, that in fact it was the exact provisions that the UK itself had. The provision in the United Kingdom permits.....

MR CHAIRMAN:

Have you got the amendment in writing so that it can be circulated?

HON J J BOSSANO:

Yes, I have photocopies. I will now proceed to explain the effect of the amendment. The principal Ordinance in Gibraltar reads, "There shall be charged on and issued out of the Consolidated Fund the amounts required to meet any Community obligation arising out of or in respect of Gibraltar". This wording in fact means that virtually anything that can be construed as arising out of our membership of the European Union or which is in respect of Gibraltar because of our membership of the European Union including, for example, the results of any infraction proceedings which involve public spending or the payment of pensions to former Spanish workers, if that were to be ruled to be a Community obligation as it was very close to happening when the matter was on the verge of being taken up by the Commission in ECJ, would automatically become by virtue of the law a charge on the Consolidated Fund without the House, or for that matter the Government, being able to do very much about it since it would be a direct legal obligation in the same way that meeting the pensions of civil servants or meeting the public debt is a direct legal obligation. In fact, in the United Kingdom this is not the case. In the United

Kingdom from which ostensibly we copied our provisions, what it says is, "There shall be charged on and issued out of the Consolidated Fund any Community obligation in respect of contributions to the capital or reserves of the European Investment Bank or in respect of loans to the bank or to redeem any loans or obligations issued or created in respect of any Community obligations" and therefore it is in fact an obligation on the Consolidated Fund of the United Kingdom in respect of meeting liabilities which are the parallel of the national obligations and therefore it is of the same nature as the obligation we have always had in our law which is in fact similar to what the United Kingdom and other countries have in respect of national debt. In Gibraltar, in fact, the wording was not constrained as it is in the United Kingdom which goes on to say, "Any other expenses require to be paid out of monies provided by Parliament" and therefore there has to be an appropriation in respect of other expenses which are Community obligations. At the moment we have, as a result of the changes brought in by the Government, all the money in the Consolidated Fund and therefore, to that extent, the original provision in the Ordinance is now something that permits access not just to some of the reserves of the Government but in fact to all of the reserves of the Government since all the reserves of the Government are now in the Consolidated Fund and not anywhere else. Therefore although we did not support the Bill because of its main purpose for the reasons that we explained in the Second Reading and, in fact, we have not had an indication from the Government as to the questions that we had regarding the bits that were not being included but certainly we have had no amending provisions tabled today to suggest that they are going to be included, which was one of the things we were told at the Second Reading might happen if there was the question that they had been overlooked. It is an opportunity I think to close a door that should not have been opened in the first instance in 1972. We are in the process of amending the principal Ordinance and therefore we commend the Bill to the House as a way of providing a safeguard for the Government against potential pitfalls in the future when they may find themselves being pushed, as indeed happened in the past, when the Government of the United Kingdom were insisting that the payment of the Spanish pensions was a Community obligation which they had the right to require us to accept as a legal liability. The position in the past was that at one stage they were very insistent but, of course, they would have not got much change out of the money that there was in the Consolidated Fund to pay the Spanish pensions. We commend the amendment to the Government, we think it is a wise move and that they should take the opportunity now that this Bill is before the House to bring this in.

HON CHIEF MINISTER:

Mr Chairman, if the hon Member had moved his amendment with the remotest hope or expectation that it should be supported by the Government as opposed to simply using it as some sort of ambush then I suppose that he would have given us more than five minutes warning of what would be a major and fundamental departure from the law as it has been for nearly 27 years now. Indeed, if the hon Member had thought that his ideas which I hasten to say have a degree of logical attraction to me, were so important in order to protect the Consolidated Fund which, of course, it does not mean just the reserve but indeed the whole revenue of the Government in any one financial year from the potential threat that he sees lurking around the corner and which frankly I have seen no sign of since I have been in office, then presumably he would have taken steps during his eight years in office to have taken this safe and prudent step. It is all very well for the hon Member to not do so or not to have done so during the last eight years and hope, not that he does, that we should do so on an amendment to the Ordinance required by an unconnected matter which is the passing of the Maastricht Treaty which certainly does not give rise to the case that he has made. If the hon Member wishes to write to me making a fuller case than the one that he has done this afternoon or if that is the best case that he thinks exists for this matter, I will reread him in Hansard and if I should change my mind about the wisdom of thanking him for his advice but not taking it then I will of course be happy to revisit the matter but I do not think the hon Member can possibly believe that it would be a reasonable decision for the Government to take in the circumstances that he invites us to do. Therefore the Government will most certainly not be supporting the amendment. Given that the hon Member felt that - and I remember actually, I cannot remember in what circumstances, whether it was just in relation to the pensions or there was another set of circumstances in which he and I debated this, I think when he was then in Government and I was in the Opposition, he has had plenty of opportunity, I would have thought, that this was an important and necessary defensive mechanism. He knows very well how the Government of Gibraltar should conduct our relationship with the Government of the United Kingdom by agreement and consensus. Agreement and consensus certainly reached following the taking by the Government of Gibraltar of a reasonable but firm and resilient stand on particular issues as they arise but that he knows jolly well that the affairs of Gibraltar cannot safely be conducted on the basis of manning the barricades which is, in effect, the legislative effect of what he is proposing, that if it ever came to protecting

our funds from the reach of the United Kingdom by legalistic means of this sort, that the relationship would have deteriorated to a point where the wider interests of Gibraltar could not be safeguarded simply by the fact that the United Kingdom Government, the Governor, could not access the Consolidated Fund. The hon Member knows that there are in any case constitutional provisions in place at the moment which would override any repeal of this section if the United Kingdom Government ever thought that they needed that or needed to access the Consolidated Fund and therefore whilst I see the detached logic of the hon Member's argument, I do not think it is actually necessary or indeed helpful to or indeed one that I envisage ever being deployed as a means of resisting payment even if the law were what the Opposition Member suggests that it should be. But as I said the law was in place for eight years whilst he was Chief Minister, it has now been in place for 18 or 19 months whilst I have been Chief Minister and neither of us have detected an inclination on the part of Her Majesty's Government, unless, of course, he knows something that I do not, certainly I am not aware of any threat by Her Majesty's Government to access Gibraltar funds without the consent of the Government or the agreement of the Government of Gibraltar. It may well be that he was at the receiving end of some such threat, I do not know. Certainly, I have not been and I would be most surprised if he had been.

The Government will not support the amendment and of course will keep the substance of the point that he has made under review should the need for it arise or should we get an indication that it might arise but it certainly would not, in my opinion, certainly would not be justified for the Government to make the sort of position that the hon Member is suggesting to in this manner or in these circumstances or without proper and full consideration which the hon Member must know, moving the amendment in the circumstances that he has moved it at such short notice, does not give the Government the reasonable opportunity to make a prudent decision. I do not know whether that disposes of the amendment and whether I can continue to address the Committee Stage of the Bill.

[Interruption]

Mr Chairman, whilst we were taking the second reading of this Bill the Leader of the Opposition enquired as to why the Bill which purported and indeed purports to give legislative effect to the Maastricht Treaty amending the Treaty of the European Union referred only to titles, 2 3 and 4. The hon Member will recall but did not relate or

refer to titles 5 and 6 of the Treaty which deal with such matters as well as title 1 which is also not referred to, as common provisions. Title 5 of the treaty is common foreign and security policy and title 6 are justice and home affairs, also not referred to of course is title 7 which is final provisions. I thought the hon Member's point was worth looking into and the Government therefore agreed to hold over the Committee Stage until today. I am happy to say that we have looked into the hon Member's anxieties in relation to the non-reference for example to titles 5 and 6 and I am happy to tell him that his fear, which I would have shared had it been correct that the omission of titles 5 and 6 somehow was politically motivated because of the subject matter of those particular titles, is in fact not correct. Indeed the English Act doing this same job, in other words, transposing the Maastricht Treaty in the United Kingdom is cast. There are one or two words different in respect of points which are relevant to the UK but not relevant to us, but in respect of the purpose of this Bill the language of the United Kingdom's old Act passed in the House of Commons is in the same terms, in other words, it relates to titles 2, 3 and 4 of the Treaty on the European Union signed at Maastricht on the 7th February 1992 together with the other provisions of the Treaty so far as they relate to those titles under protocols adopted at Maastricht on that date and annexed to the treaty established in the European Community with the exceptions of protocol 14 on social policy. The reason why neither our Bill which is in the same terms as the United Kingdom Bill nor the United Kingdom Bill itself refer to, for example, titles 1, 5, 6 and 7 of the Treaty is this, the provision here in our clause 2 which is also the United Kingdom's clause 2, does not list the provisions of titles 5 common foreign and security policy or of title 6 justice and home affairs because these parts of the Treaty on the European Union do not provide a basis for the adoption of Community legislation and neither give rise to rights and obligations of Community law nor amend the Community Treaties. They relate to action which takes place on an intergovernmental level, on common, foreign and security policy or in justice and home affairs and do not, as I have said, give rise to Community rights and obligations. Such intergovernmental matters are dealt with for example by conventions or by joint action programmes. The titles do not make provision as do the Community treaties for the legislative instruments needed to give effect to Council decisions for example by regulations, directives, decisions, etc. The subject matters of titles 5 and 6 of the Maastricht Treaty are not issues that can result in directives or regulations which we might have to transpose into the laws of Gibraltar necessitating this amendment to the European Union Amendment Bill. They are

areas in which the Community and therefore the Community institutions in the form of the Commission do not have confidence and they are areas which can only generate subject matters that can only generate intergovernmental agreements and cannot create legal rights and obligations other than by separate treaties, conventions or joint action plans in each case. On the occasions and I can tell the hon Member as he may be aware from reading the press that for example in respect of title 6 justice and home affairs there are hundreds of justice and home affairs proposals going at present through the various steps of consideration and as and when they emerge they emerge not as directives or as regulations, not as anything that is capable of creating an obligation under the Treaty established in the European Union but rather as intergovernmental conventions or joint action plans and then to the extent that Gibraltar is included or not included and of course there is an issue there constantly, as I am sure it was for him, but it is certainly an issue at the moment that how the United Kingdom deals with Gibraltar in those justice and home affairs issues which do not arise from Community obligations but by case by case intergovernmental treaty negotiation to the extent that Gibraltar is included in those we would then have to give legislative effect to those to the extent that they require legislation to implement those obligations by ordinary legislation rather than by any mechanism to give effect to directly applicable binding European Community obligations. That is precisely the case that appertains in the United Kingdom. The European Union, it is called in England the European Communities (Amendment) Act 1993, has been amended in the same terms referring to the same titles and also referring to the titles not mentioned by number by using exactly the same formula as is used here in our Bill together with the other provisions of the Treaty. So far as they relate to those titles and it is just an identical legislative mechanism which recognises the fact and which accommodates the fact, only that these titles do not create Community obligations, are not capable of creating Community obligations and simply establish areas whereby government can agree at intergovernmental level on a case by case basis if they choose to do so. Therefore on the basis of that clarification the Government are entirely satisfied that it is correct and proper to amend the European Communities (Amendment) Ordinance in this form. Of course, I acknowledge that that clarification will not recruit the support of the Opposition Members to the Bill because their objections, as I recall them from last time, were based on much more radical hard line grounds than that, namely that the position of the Opposition now appears to be that we should not comply with any of our Community obligations until some of the areas in which we say our Community

rights are being infringed are saved. I think that the hon Member should recognise that that is not a responsible position, indeed it is not the position that he adopted when he was in Government. He, as he well knows, transposed numerous Community obligations notwithstanding that the same things that we object to, such things as non-recognition of our voting rights etc etc were just as germane then as they are now and it is just another example, Mr Chairman, of radical and bold action that the hon Members recommend to us that they were not able or willing to take when they had the opportunity to do so and for that reason, as well as because we do not agree with the approach inherent in their suggestion, their suggestions do not look attractive to us from this side of the House. I therefore hope that at least it is a clarification that the hon Member sought and it certainly enables the Government to proceed with the Bill as we had presented it to the House originally.

HON J J BOSSANO:

Mr Chairman, when we referred to the protocols and the areas that had not been reflected, title 6 in particular, in fact I think at the second reading, we asked the Government whether in fact the explanation was if this was intergovernment and at that time they were not able to confirm this and now they have confirmed it presumably by checking back as to the reasoning behind the leaving out of this title. It is, of course, something that I think needs to be recorded and repeated but this particular title is very relevant to the provisions of new title 3A in the Amsterdam Treaty and that the Amsterdam Treaty is removing parts of what is covered as an intergovernment pillar in title 6 in areas such as the external frontiers, the rules governing the crossing by persons, the asylum policy, the immigration policy. Quite a number of the things that are included in title 6 under article K(1) will become Treaty obligations under title 3A so we will then see what happens when that particular Bill has to be transposed or not transposed into the national law of the United Kingdom and into our own law. But, the explanation that has been given as to the fact that it is historically, that is to say, at the time that it was done in Maastricht it was an intergovernment obligation and of course in the United Kingdom it was brought in in 1993 and it has not been brought in in Gibraltar until now. Therefore, I think it is very pertinent that at this particular time, when we are bringing in, for example, title 2 and where title 2 provides for a uniform voting system we have in the House of Commons in the United Kingdom a Bill which creates one constituency for Northern Ireland, one constituency for Scotland, one constituency for Wales and a number of

constituencies for England where the Government of Gibraltar has written to all the Members of Parliament asking for their support in including Gibraltar. We are accepting in what we are doing the application of title 2 to Gibraltar notwithstanding the fact that we are being excluded and the fact that we are asking other people to do something about including us. It seems to me that the timing of this is appropriate particularly for those circumstances and therefore I cannot accept the argument of the Government that we should have done it in 1993 or before that or since then because in fact we never brought it in. They are bringing it in, we did not. Mr Chairman, I am afraid that notwithstanding the explanation as to why the intergovernment deal has not been reflected which is following UK practice, the Chief Minister is correct in saying that what he has told us will not get us to change our minds on the voting and we will be opposing the Bill as a whole.

Question put on the amendment. The House voted.

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

The amendment was defeated.

Question put on Clause 2. The House voted.

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

Clause 2 stood part of the Bill.

HON CHIEF MINISTER:

In the Long Title, Mr Chairman, given that it was held over it does say 1997 and of course that should now read 1998. I have not given written notice but I do not suppose hon Members will care. That should now read 1998.

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

THE FINANCIAL SERVICES BILL 1997

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

Clause 2

HON P C MONTEGRIFFO:

Mr Chairman, there are three amendments to clause 2 subsection (2). In subsection 2(2) the word "delegate" in the definition of Minister should be replaced with "designate" and again in section 2 between subsections (4) and (5) the insertion of a new subsection (5) to read "Section 2 of the Financial Institutions (Prudential Supervision) Ordinance 1997 (meaning of closely linked) applies to the purpose of this Ordinance" and thirdly in consequence thereof subsections (5) and (6) of section 5 become subsections (6) and (7).

Question put. The House voted.

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

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

Clauses 3 to 37 and Schedules 1 to 6

Question put. The House voted.

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

Clauses 3 to 37 and Schedules 1 to 6 stood part of the Bill.

HON P C MONTEGRIFFO:

Mr Chairman, in the Long Title we would like to delete the words "to provisions of" where they appear before the word "Council Directive 93/6/EEC".

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

THIRD READING

HON ATTORNEY-GENERAL:

I have the honour to report that the Maintenance Ordinance (Amendment) Bill, the Domestic Violence and Matrimonial Proceedings Bill, the Control of Trade in Endangered Species Bill 1997, the European Communities (Amendment) Bill 1998 and the Financial Services Bill

1997 have been considered in Committee and agreed to with amendments and I now move that they be read a third time and passed.

Question put.

The Maintenance Ordinance (Amendment) Bill 1998; the Domestic Violence and Matrimonial Proceedings Bill and the Control of Trade in Endangered Species Bill 1998, were agreed to and read a third time and passed.

The European Communities (Amendment) Bill 1998, and the Financial Services Bill 1998.

The House voted.

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

The Bills were read a third time and passed.

The House recessed at 4.55 pm.

The House resumed at 5.40 pm.

PRIVATE MEMBERS' MOTIONS

HON J J BOSSANO:

Mr Speaker, I beg to move a motion of which I have given notice namely that:

"This House:-

1. Recognises the enormous contribution made by Robert Peliza to the political affairs of Gibraltar;

2. Pays tribute to his exceptional representation of Gibraltar internationally and particularly in the United Kingdom Parliament;
3. Recognises the substantial contribution made by him in Gibraltarian constitutional advancement;
4. And in recognition thereof resolves to bestow on him the highest honour that this House can bestow on a citizen of Gibraltar, namely the Honorary Freedom of the City of Gibraltar."

Mr Speaker, when I put the original motion in the House last year in fact I thought that the way it was worded was sufficient as a follow-up to the motion brought to this House about a year ago to proceed in the course of 1998 to grant, obviously on the assumption that the motion would be carried, the Freedom of the City to Bob Peliza some time this year. It was brought to my attention that this was not the case, that it did not follow automatically without the wording that actually involved the act of bestowing the Freedom of the City on him and therefore I gave notice on the 12th December 1997 replacing the original wording with this wording. Since then, of course, I am sure we are all delighted that Bob has been honoured in the New Year's Honours and it is incorrect in the sense that I am not referring to him by his new title but I am sure Bob will expect us to continue to call him Bob for many years to come as people that have shared a great chunk of his life in the political scene in Gibraltar. I think he has both in the receiving of the Knighthood and in this motion in this House he sees this as a tribute not to him as an individual but as a recognition of the importance of the contribution that he has made and the issues over which he has been committed for such a long chunk of his life. Now that we are hearing new numbers being convinced of the value of integration there is all the more reason for us coming around to the idea that perhaps Bob's contribution to Gibraltar's political development and constitutional history may yet go further than it has done until now, since there appears to be new converts every day when one reads the correspondence columns, some unexpected converts I may say in the process. Certainly, when we are looking to 1998 in the context of the forthcoming statement by Her Majesty's Government on the review of the Dependent Territories and the prospects for constitutional change in Gibraltar then recognising the work of those that have been pushing to protect Gibraltar's political future and give us a secure place in the world in the past is something that serves a dual purpose in my judgement, one is to give the recognition that is due and another one is to encourage us to continue the good work on the foundations that our

predecessors have laid down. I commend the motion to the House.

HON CHIEF MINISTER:

Mr Speaker, the Government are very happy to support this motion. On the 5th July last year at the time that we sought to uncouple the granting of the Freedom of the City to Sir Bob Peliza from that of Sir Joshua Hassan I said that in our opinion Bob Peliza is deserving of the Freedom of the City and indeed I added words which became our amendment to the Leader of the Opposition's motion to the effect that, "This House recognises the enormous contribution made by Robert Peliza to the political affairs of Gibraltar and in consequence thereof records its intention to further acknowledge his contribution by conferring upon him the Honorary Freedom of the City of Gibraltar at an appropriate occasion in the future". It is, I think, proper that we ought to have placed a period of time between the motions in favour of Sir Joshua and Bob Peliza and I think the time is now very ripe to bestow the honour also on Bob Peliza. When the people of Gibraltar reach their final destination as a people and our history and the history of that trajectory is written there will be a number of individuals who have contributed to Gibraltar's affairs who I think will earn a particularly noteworthy mention in that history of Gibraltar and I believe that Bob Peliza will be counted amongst those individuals. He has contributed as much as anybody else and probably much more than most amongst Gibraltar's political class to fostering closer links with the United Kingdom and in particular I think perhaps the younger generation in Gibraltar are not perhaps aware of the extent to which the existence of the Gibraltar Parliamentary Lobby is something which we owe to Bob Peliza who, during the years that he lived in London, devoted much of his spare time to developing friends for Gibraltar in both Houses of Parliament and indeed amongst the press in the United Kingdom and that has formed the bedrock of what is today still the British Gibraltar Group in both Houses of Parliament and in a sense he was the father of that as well.

Very young Gibraltarians may not be aware that Bob was at the forefront of the campaign to persuade the then Tory Government of the merits of giving the people of Gibraltar the right to apply to register as British Citizens at the time when that was denied by the British Government to the citizens of all other dependencies and Colonies and Bob was instrumental in moving the Gibraltar Lobby, particularly in the House of Lords where the rebellion against the Government started on this issue to bring about an amendment to the British Nationality Act, the effect and result of which was that Gibraltarians to

this day and have had now for many years the right to register as British Citizens. I think, as if those were not sufficiently noteworthy achievements, I think his greatest achievement was his enormous contribution - some would go further than that, some might say that without him it would not have occurred - his enormous role in securing the inclusion of the Preamble to the Constitution in the Constitution. It is a commitment on behalf of the British Government, on the part of the British Government, that to this day, judging by the number of times it is quoted at us and by us it is still almost the fundamental precept of politics in Gibraltar and again I think it is right that this House should recognise his central part in obtaining that sort of categorical assurance which nobody had ever succeeded in obtaining from a British Government before. That might be, of course, because nobody else had wanted it before. Bob was also the first Chief Minister under the new Constitution in 1969 and he has also been Leader of the Opposition. He served as Speaker of this House between 1988 and 1996 and I think there are few people in Gibraltar that have occupied as many offices of importance. Not only was the man the things that I have described but he also did the things that I have described in Parliament in the Constitutional discussions and things of that kind. He also found time to found in Gibraltar another institution which remains central to our general political life which is the European Movement. I think that the recommendation from Gibraltar that Bob should be recognised by Her Majesty the Queen in this New Year's Honours List by the award of a knighthood is nothing less than he deserves and I think coupled with this honour which we now bestow on him, I think it is nothing less than the recognition that he is entitled to by and from the people of Gibraltar. When one has finished saying all that about Bob Peliza which is really much more than it will be possible to say about most of us one can still say that in addition to all these virtues the man has the extraordinary ability to be a friendly gentleman at all times and that by that friendly engaging friendly way in which he carried out the role in politics with his opponents he has earned the respect and affection of political friends and political opponents alike. At the end of the day I know that that must be something of which Bob is also very proud. It has been a pleasure to have come into political contact with him. He, towards the end of his parliamentary career, mine towards the beginning, but certainly those of us that have had the opportunity to rub shoulders politically, in political institutions with him, will be much the better off for having had him as a guide during our early formative years in this House whilst I was on the other side of it. It therefore is a great pleasure and satisfaction to join with the Opposition in bestowing the

Freedom of the City on our mutual friend Sir Robert Peliza.

HON J GABAY:

Mr Speaker, there is no doubt whatsoever that Bob's contribution to the political life of Gibraltar is really quite singular in many ways but rather than mention his achievements in the political field, which have already been highlighted by the Chief Minister and the Leader of the Opposition, I would like briefly to pay tribute to a certain aspect of his character which I think has enhanced almost all the roles that he has undertaken in the past. Those of us who knew him as an Officer in the Gibraltar Defence Force will recall that he was not merely the typical Officer of the day - far from it. He was, to some extent, a father figure to his men. He always brought to bear the flexibility of reason when arbitrary law seemed to be the order of the day as you might expect in the army. An understanding, indeed, a great deal of understanding, where hard tasks might have overwhelmed the raw recruits of the day and in fact even comforting hints when the arrogance of power was virtually the order of the day as well in those days. I will always recall one particular incident, even though it goes back a long time, when on parade at Buena Vista Barracks for virtually two hours in the heat of summer, one of the young Officers, and there were many of them in those days doing national service, came up and said to me, "Local, unpaid Lance Bombardier, what are the initials of His Excellency the Governor?". Well, under the stress of the sun for two hours I said, "Look, I do not know and what more I do not care". He said, "Well, you are on two charges, one for ignorance and one for insolence". The matter was referred to then Captain Peliza, who ironed out the situation and sent me off with a book to read and this is really quite characteristic of the man. He was very much a father figure to all of us there.

Whether as Chief Minister or whether as Speaker of the House I knew he always displayed these commendable traits of character which I would list as integrity, openness, friendliness and a keen sense of commitment and purpose as well as an enthusiastic love for his home and his people. Generally speaking, whether locally or globally, in the practice of politics one does not always enjoy a good reputation. It is occasionally branded with reproach and cynicism, so thinking of a provocative approach that characterises this cynicism there is a quotation from H L Mencken who once said, humorously but of course provocatively, and I quote, "Experience teaches us one thing. It teaches us this, that a good politician and a democracy is quite as unthinkable as an honest

burglar". Mr Speaker, I am usually accused of being provocative, which I rather enjoy, but I think in granting Bob the Freedom of the City this House is recognising not only his contribution to political life but those finer qualities of character that are an example of moral calibre in a politician which we can refresh our memory of, honesty, decency, modesty, integrity and long and unremitting effort for his people.

HON J J BOSSANO:

All I want to add, Mr Speaker, is that I am sure that the sentiments that have been expressed by the three of us that have spoken are shared not just by all of us in this House but by the vast majority of our fellow citizens and that the people of Gibraltar will be very pleased at the step we are taking today.

Question put. Passed unanimously.

PRIVATE MEMBERS' BILL

HON P C MONTEGRIFFO:

Mr Speaker, I move leave to introduce a Bill.

Question put. Agreed to.

HON P C MONTEGRIFFO:

Mr Speaker, I have the honour to move the suspension of Standing Order 38 in order to proceed with the first and second readings of the Bill.

I am not sure whether the House will appreciate an explanation at this stage of the background to the Bill before the House votes on the suspension. Mr Speaker, as my contribution to the second reading will demonstrate it is a pretty unique type of legislation to be brought to a legislature but not unique by any means by comparison to what has been undertaken in other legislatures, specifically in the case of the NatWest situation in the legislatures of the Isle of Man, Guernsey and Jersey.

The Bill will have the effect of transferring the business of NatWest Plc which is the UK Plc to NatWest Isle of Man which will establish a branch in Gibraltar and the reason that the business is being transferred is purely for restructuring purposes. The NatWest group, together with other groups, are in a constant course of reorganisation. The reorganisation of the Gibraltar operation is purely to bring the NatWest Gibraltar presence under the umbrella of its offshore operation rather than under the umbrella of its onshore UK

operation. Members might ask what has this got to do with the House? The reason for that which will be covered in my substantive contribution in the second reading, is that the logistics involved in transferring the accounts held by clients of NatWest Gibraltar to the new NatWest would be horrendous. There are roughly 10,000 account holders with mortgages, with security documentation, with loan accounts, etc, so the mechanism used quite often in these circumstances is actually to effect a transfer of the undertaking of a company lock, stock and barrel by legislative means from one entity to the other. Such measures are sometimes undertaken by a court of law. Indeed, in similar situations, for example, in the insurance world, where one insurance company takes over another there are often applications to a court so that instead of issuing new policies a court can indicate that the rights that one particular policy holder might have will now continue with the new company. Essentially, what we are doing and the reason for the legislation is purely to replicate what the other jurisdictions where NatWest have also restructured operations, have already done, namely pass legislation which will allow in one go for the business of NatWest to pass from where it currently is to its new offshore structure. Gibraltar will in fact be the last place that does this. The Isle of Man, Jersey and Guernsey have already passed this legislation and the reason I am seeking suspension of Standing Orders is that indeed as a Private Members' Bill the rules would require publication in the Gazette on two separate occasions before this matter is brought to the House. Mr Speaker, this is purely as a result of oversight and I am going to be quite candid with the House on that. The matter has not been dealt with on that basis but it is not as though, indeed, this is a last minute thought, it had been the intention of the Government to actually bring this Bill to the House in the December meeting and we deferred for January in order to give more time for last minute matters to be attended to but it is not as though it is anything other than an administrative oversight. It is actually now urgent and important for the business to be taken because the transfer of all the offshore business, Isle of Man, Jersey, Guernsey and Gibraltar was to have taken place by the beginning of this year and because of the delay now all the group is being held back before the Gibraltar part of the jigsaw can be put into place.

Mr Speaker, with the House's leave, I would seek that the Standing Orders be suspended and I will in my contribution in the second reading give more details of the background to these provisions and to what effectively is involved in the transfer of this undertaking. Let me add that not only is this legislation one that has been taken through other

legislatures but indeed it is likely that a second Bill of this type will be presented to the House in the course of 1998. It is by no means something which is unique to NatWest. It is something which is now becoming quite common in reorganisations of this type and it is likely that another international banking group in Gibraltar that is seeking to restructure its operations in terms similar to the ones that I have outlined for NatWest, will also be seeking the Government's support in the presentation of a Bill along the lines currently before the House.

HON J J BOSSANO:

Mr Speaker, I imagine the provision in the Standing Orders is more for the benefit of the public than for the benefit of the House, although without the suspension of Standing Order 38 the Standing Orders prevent the Bill going through a first reading because the Bill has not been published on two consecutive occasions in the Gazette. But I am afraid the reason why we need a Bill in the first place is not clear from the explanation that has been given because, presumably, every time a bank takes over another bank they have to do the same thing. We have had takeovers in Gibraltar before when Jyske Bank came in and bought Galliano they took over the business of Galliano with all its assets and all its liabilities and all its accounts. When BCCI bought the City Bank the same thing happened. The House did not have to pass legislation transferring the existing business from a previous owner to a new owner. To say that there is a lot of logistics involved because there are 10,000 accounts, well presumably any business that is bought over by another business involves that the new owner acquires all the commitments of the previous owner in relation to the customers. It may be that it is cheaper to do it this way than to do it any other way and that therefore what we are doing or what we are being asked to do and what is being done by other jurisdictions is simply that it is a more cost-effective way of bringing about the same result. But independent of looking at the merits of the Bill like any other Bill that is before the House, the principle, at this stage of having a transfer of ownership carried out by legislation is not one that I think has been previously done by this House of Assembly. I do not know whether it is common practice in other jurisdictions but certainly it is not something that I have ever come across in the time that I have been here and if it is going to happen in the future then I think we need frankly more of an explanation than has been provided simply by saying the logistics problem is very big. Certainly in our case there is an added dimension when we are talking about banking in that at the moment what we have in Gibraltar, as I understand it, is a UK

bank that has passported in, unless the NatWest entity in Gibraltar is not a branch..... it is a branch? Well if it is a branch then what we have is somebody operating on a UK licence under the terms of Community law. It will cease to be the branch of a Community bank and it will become the branch of a non-EEC bank. I think in looking at that particular dimension the operations in Jersey, Guernsey and the Isle of Man have been the competitors of Gibraltar after the same market, that is to say, the manager, presumably, in the Gibraltar operation had an interest in proving to his superiors in London that it was better getting businesses than the branch of the same bank after the same customers in Jersey or Guernsey. The new set up is one where Gibraltar will report to the Isle of Man and not to London, from what has been said so far. I do not know whether that is going to bring us more or less business but it is something to do really with the second part of the exercise which is actually the merits of the Bill itself in terms of what it does for Gibraltar. I think at this stage what we are saying is we certainly do not want to do anything or say anything that is going to be detrimental to the attractions of Gibraltar to people in the finance industry and therefore we do not want to send the message to NatWest and certainly we would not want to do anything if the choice was that either we do it this way or they close the branch down and make everybody redundant. If that was the choice then there is nothing more to be said on the matter but if it is not that black and white then why is it that there is a need to proceed in this way? Why is it that the ownership of the Gibraltar branch cannot be simply transferred like any other business being bought by a third party? Suppose there was a takeover of any of the banks that are here, we would not be expecting to be legislating to do the transfer through an Ordinance in the House of Assembly, surely?

MR SPEAKER:

I want to have clear, are you against the suspension?

HON J J BOSSANO:

No, no, I am in fact speaking in relation to the suspension because what I am saying is we are prepared to support the Government because we do not want to do anything to hinder the process and therefore we will vote in favour of the suspension so that the Bill can proceed but frankly, the degree to which the need to bring the Bill to the House has been explained which has been simply that the logistics of changing the ownership of a branch with 10,000 accounts, what is different between any other business in Gibraltar being bought by anybody else? Would that not normally simply happen commercially

without the need for legislation? What makes it different in this case?

Question put. Agreed to.

BILLS

FIRST AND SECOND READINGS

THE NATIONAL WESTMINSTER BANK PLC ORDINANCE 1998

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to transfer the Gibraltar undertaking of National Westminster Bank Plc to NatWest Offshore Limited and for connected purposes 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, as I said a couple of minutes ago, the purpose of the Bill is to transfer the business of the Gibraltar Branch of the National Westminster Bank Plc to NatWest Offshore Limited which is incorporated in the Isle of Man, this is part of an overall restructuring of NatWest operations in the UK offshore territories in Europe, namely Jersey, Guernsey, Isle of Man and Gibraltar. Legislation similar to this Bill has been passed by the legislatures in all the other territories. The objective of the Bill is to enable NatWest to bring together its different offshore operations into a single grouping under which management and resources across jurisdictions can be combined under a single company structure with shared information technology and data processing as well as a single customer base for marketing purposes and common terms of conditions of employment for all staff.

Mr Speaker, NatWest first established its presence in Gibraltar in 1988 and this year celebrates its 10 years in Gibraltar. They currently have 50 staff in Gibraltar which makes it one of the largest banking institutions on the Rock. It currently has, I was mentioning a few minutes ago, 10,000 customers and the Branch provides services which are corporate, right through to personal etc. The restructuring will enable these services to be greatly expanded. The benefits, therefore, of the Gibraltar Branch coming under the new NatWest Offshore structure will include the following:

Firstly, customers in Gibraltar, and elsewhere, will benefit from an increased ability by NatWest to develop services specifically for local and expat markets, with better prices and benefits;

Secondly, NatWest anticipate this will be a positive opportunity for staff in Gibraltar with increased opportunities for staff to take on wider responsibilities and increase training as they move around the offshore units of the NatWest group and indeed it is expected that staff numbers will increase as a result of this move;

Thirdly, it is anticipated that the level of tax revenue to be generated by NatWest Offshore Limited for the Gibraltar Treasury will be the same and probably increased as the business grows as a result of these changes.

NatWest feels the creation of NatWest Offshore is a logical step that will allow NatWest in Gibraltar to benefit fully the benefit of its customers and staff. The Bill before the House, when passed, will allow NatWest to change its structure with the minimum of inconvenience to customers and will avoid the need to transfer accounts, credit agreements, securities and so forth. Dealing specifically then with this point in more detail, it is essentially the question of convenience and logistic ease which is at the heart of this Bill. There is no more magic to it. It may be a matter of judgement whether the legislature should be put out for one particular class of business more than any other. There are few businesses certainly that involve the transfer of this amount of individual accounts with the consequent costs and logistical headache but it is essentially nothing more and nothing less than legislation to avoid the otherwise extremely onerous task of changing mandates, changing bank documentation, indeed transferring the undertaking of the business in the way that would normally be required. Evidence of that is the fact also that the three other jurisdictions in question have been persuaded to pass this legislation. As I mentioned, Gibraltar is not trailblazing in this exercise, we are following what the Isle of Man, Jersey and Guernsey have done. All of those jurisdictions have passed this legislation which will therefore see their NatWest banks falling under and reporting to the Isle of Man Bank. A result which of course they are perfectly capable of achieving even if we chose not to pass this legislation, if indeed the bank was required to enter into purely commercial and contractual arrangements for the transfer of the business, the same result would ensue, the only thing that would happen, frankly is that whilst NatWest would be very happy with the legislatures

of Jersey, Guernsey and the Isle of Man, we would have some explaining to do in why Gibraltar sought not to also be of assistance to them in maintaining low costs in what is just a restructuring when the other three jurisdictions who are indeed our competitive jurisdictions in that sense had waved the legislation through. It certainly weighs on my mind that when Gibraltar is keen to protect its industry and to show itself to be helpful and prepared to accommodate reasonable changes especially changes that are indicated as being ones that will enhance the position of the bank in Gibraltar and give it a bigger offshore focus, it weighs on my mind that we should not be the odd man out basically saying no when the other jurisdictions have said yes. Costs I think is also the second point the Leader of the Opposition mentioned, is also an important feature. This provision will reduce significantly the cost to NatWest of an otherwise very onerous exercise and it is something which, as I say, another bank quite independently of this exercise, is also seeking the Government's consent and support of.

With regard to the regulatory issues I do not share personally the concern or the anxiety or the significance attached by the hon Member to the question that today we have a branch of a UK company and we shall shortly have a branch of an Isle of Man company. The Financial Services Commission have in fact already issued fresh licences to NatWest Offshore Limited, fresh licences both to the entity as a bank and to the entity as a financial services provider, for things like investment, dealing in brokerage, etc. Indeed in this transfer from branch of the UK to branch of the offshore structure there are those that would argue, and I argue this generally and not specifically in the context of NatWest, that it is often better for offshore clients, expat clients, to be housed under an entity which is not reportable to their domestic jurisdiction and I can say that certainly from my previous experience professionally, that used to be a consideration with some clients. The fact that there should not be a link on computer basis and on reporting lines back to domestic head office and the fact that they are now into head office offshore umbrella may have its advantages and may partly explain as well part of the reasoning for segregating the business away from UK domestic into offshore structure. I think I would concede that the legislation is an unusual piece of legislation. I am not aware of the Gibraltar legislature having passed a piece of legislation like this in the past but I am very aware and it has been confirmed to me that it is not untypical either in the case of NatWest or indeed in previous restructurings that other jurisdictions have undertaken and I therefore think in the circumstances that I have explained to the House it

is a reasonable use of this Legislature's time and a reasonable facility extended to a major banking group in the context of the facilities extended to it by the other offshore territories within Europe within which it operates for Gibraltar to accede to this request and for this House to support and pass this legislation. 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 will support the Bill but I am afraid that we have not heard any argument from the Minister which deals with the need for the House to do this other than it suits National Westminster to do it this way. The fact that Jersey, Guernsey, the Isle of Man or anybody else may choose to do it, I do not know what considerations or what debate there has been in those legislatures before this Bill was passed or whether it was passed in one afternoon or whether it was debated at length. At the end of the day the decision that we have to take we have to take on the basis of the arguments that are put here.

HON P C MONTEGRIFFO:

If the hon Member would give way, I want to make sure that he is not labouring under any misconception. There are no other reasons. The reason is that, and this is what Private Members' Bills are for, and the reason that the Government have sought to support it and to table the Bill is because the Government believes that the request is a reasonable one for the Government and for Gibraltar to support but the reason is principally and indeed entirely the convenience and logistical ease which this will give to the restructuring of NatWest's offshore structure. As I said, hon Members may take a view on the extent to which such measures should be supported legislatively. I would simply say that the view taken by the Gibraltar Government is identical to that taken by the equivalent legislatures and of the Governments of the other three centres in which the NatWest offshore group operates and it would seem to me not a good position to put Gibraltar in for us to be the ones that were refusing to cooperate in what is a very competitive and sensitive area.

HON J J BOSSANO:

Mr Speaker, the point of asking why the law is needed is because to simply say it is because of the logistic inconvenience and because there are 10,000 accounts does not explain anything as far as we are concerned. If we

were being told National Westminster Bank will not continue in Gibraltar unless we do it this way then as I said at the beginning there would be nothing to discuss because we want them to stay here. They employ 50 people and they generate employment and income. If it is a question that there is no other way of doing this because each one of the 10,000 account holders has to be individually asked then my question would be that it is very strange that when Banesto was taken over, when Galliano's Bank was taken over, when the City Bank was taken over, none of this seemed to be necessary. I am trying to establish, not because we are against it being done, I am trying to establish the reason why we are doing it given that it seems to me that it is not something that we have ever done before in this House. It may well be that in Jersey, Guernsey and the Isle of Man they have done it many times before and presumably the first time it was done, somebody questioned why it was being done and then it was not questioned subsequently, if they had done it many times before, but this is the first time we are doing it here. Since it is the first time, we have made clear from the beginning that we are not seeking to be difficult or obstructive or prevent anything that makes Gibraltar attractive to people in the Finance Centre or sends the wrong message to NatWest Bank, it is just that simply to say it is for logistical reasons, well, what does that mean? Does it mean that they have to get the consent of all their account holders? Is it not going to continue to be called NatWest Bank? Have we not had changes of bank ownership before? In Gibraltar there have been changes of ownership of banks and people have finished up with a new bank and to my knowledge and having been a customer for some of those banks, it did not require a major logistic exercise. I just found myself with a different provider of the same service the day after and nothing else changed, except that one cheque book was taken away and another cheque book appeared with a different name on it. If it is a question that doing it this way will save NatWest having to spend money on lawyers fees or whatever, then fine, we think we ought in this House to be reducing the legal costs of the uses of the finance service. That may be a very good idea particularly since some Members are no longer in the field and they probably feel less constrained that they might otherwise be, but if it is a sensible thing to do and we are going to be doing it more often then, frankly, maybe if we had been given the explanations the Minister thought we had been given, we might not be asking the question, we might have asked them directly of the people that have approached the Government but the truth is that this is the first opportunity we have to ask those questions.

HON CHIEF MINISTER:

Mr Speaker, I really do not see why the hon Member is being so dogged in his refusal to get his mind around us in this matter. It is true that there is not a great history of such legislation in Gibraltar but the same is not true in the United Kingdom where Private Members' Bills are constantly being taken to the House of Commons to regulate what are exclusively private interests and indeed even in Gibraltar we have an example of a Bill which was not a Private Members' Bill only because the Government decided to bring it to the House as Government business which is the Christian Brothers Property Ordinance which was passed by the House in order to cure a defect in the title of, curiously enough what is today NatWest house, that used to belong to the Christian Brothers and there was some strange defect which I now cannot remember what it was in the title and an Ordinance was passed in this House to cure that title and to correct that title so that the Christian Brothers could sell the building. The mechanism of using legislation in order to bring about some entirely private, sometimes commercial, sometimes not commercial interest is very common in the United Kingdom and the reason he asks why have not the others done it, I suppose the answer is that they were not advised by their lawyers that they could do this.

One of the reasons the hon Member has cited to, he cited the takeover of Galliano's Bank by Jyske Bank and the takeover of City Bank by BCCI, but in those cases it probably was not necessary because Jyske Bank did not come to Gibraltar and say, "I, Jyske Bank in England, or Jyske Bank in Denmark, will buy the business of Galliano's Bank". What they did is that they bought the share capital from the existing shareholders of a company called Galliano's Bank Gibraltar Limited and then changed the name of that company to Jyske Bank Gibraltar Limited so that in fact there was no change of legal entity, there was no business to transfer, there were no accounts to change, there were no security documents, because all there was was a buy out of shares followed by a change of name of the company and indeed I believe that the same thing happened when BCCI bought City Bank, they bought out the Gibraltar company and changed its name to BCCI Gibraltar Limited. These became subsidiaries so there was no change in the legal personality of the company involved but I think that whilst that is probably the reason, I do not speak from certain knowledge but whilst that was probably the reason why those two transactions were not structured in this way, the hon Member is absolutely correct when he says that others taking over, not buying a company, but taking over a branch could easily opt to proceed in this manner and of course I

accept something which is almost implicit in what the hon Member says and that is if the House of Assembly sets itself up as a sort of quickie legal lawyers office and through this we run the risk of having to do it for everybody that asks us or otherwise having to do it for some and not for others. I agree that that is a danger. On what basis do you agree to do it for one commercial entity and not for every commercial entity that subsequently asks and then points to this one as a precedent. But certainly the mechanism is not particularly strange in parliamentary usage in the United Kingdom and that it could have been used by others in the past but simply has not been, I think, is certainly true as is also true the fact that at the end of the day it is down to pure convenience. Either it is done this way or every mortgage has to be re-executed and the parties have to sign again and every bank mandate has to be signed again and every Letter of Instruction and every Direct Debt and every Standing Order and every Loan Agreement has to be resigned. It is either that which is simply expensive and inconvenient or this and therefore that is why the Minister said that at the end of the day there was no point in looking for any greater justification or explanation for this but that it is the quickest and cheapest way of achieving what they want to achieve and that the alternative involved a hell of a lot of management time, a hell of a lot of administrative effort and probably a lot of expense. It has to be borne in mind that there probably is a degree of loss of revenue to this for the Government given that some Stamp Duty would have been payable, for example on the transfer of Mortgage Security but at the end of the day the Government takes the view as the mover of the Bill has said that if we can provide a friendly facility to an important financial services organisation and there is not a particularly good reason to turn them down then I think it is in our interests to keep financial institutions like NatWest Gibraltar-friendly and I suppose it all boils down to that and there is no need to look any deeper for a reason other than that.

HON P C MONTEGRIFFO:

I have nothing further to add. Without being able to confirm the position either with BCCI or with Galliano's, certainly the distinction that the Chief Minister has made with regard to the position of that Branch and subsidiary would be a perfectly legally good distinction which will explain completely the differences in logistical costs involved in the acquisition of a subsidiary, where nothing changes other than a name, and the acquisition of a business or a branch, in this case it is in fact a UK branch, or a branch of a UK company which of course it would be impossible for the offshore

group to acquire. There is no way in which you can get round the problem by the acquisition of the head office of the branch.

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.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

I have the honour to move that the House should resolve itself into Committee to consider the National Westminster Bank Plc Bill 1998, clause by clause.

Clauses 1 to 13 and the Long Title were agreed to and stood part of the Bill.

THIRD READING

HON ATTORNEY-GENERAL:

I have the honour to report that the National Westminster Bank Plc Bill 1998, has been considered in Committee and agreed to without amendments. I now move that it be read a third time and passed.

Question put. Agreed to.

The Bill was read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

Mr Speaker, I have the honour to move that this House do not adjourn sine die.

Question put. Agreed to.

The adjournment of the House was taken at 6.35 pm on Monday 19th January, 1998.