GIBRALTAR

HOUSE OF ASSEMBLY

HANSARD

26TH JUNE, 1997

(adj to 22nd July 1997)

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Seventh Meeting of the First Session of the Eighth House of Assembly held in the House of Assembly Chamber on Thursday the 26th June, 1997, at 2.30 pm.

PRESENT:

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

GOVERNMENT:

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

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 29th April, 1997, having been circulated to all hon Members were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

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

(1) Report and audited accounts of the Gibraltar Broad-Casting Corporation for the year ended 31st March 1995.

(2) Report and audited accounts of the Gibraltar Heritage Trust for the year ended 31st March 1996.

Ordered to lie.

MINISTERIAL STATEMENT

MR SPEAKER:

I have received notice that there is going to be a Ministerial Statement by the Chief Minister so I will call on him.

HON CHIEF MINISTER:

I am obliged, Mr Speaker.

As hon Members know the Member States of the European Union have for many months been negotiating the Treaty of Amsterdam under the umbrella of the EU Intergovernmental Conference to amend the Treaty establishing the Union.

During the last few months the Gibraltar Government have deployed its own resources to obtain copies of all drafts of the Treaty texts, as and when they became available, and have studied those texts to identify provisions which might operate adversely to the interests of Gibraltar.

During April 1997 the Government studied the then latest draft text dated 20th March 1997. Two points were identified, which were the subject of a letter dated 22nd April 1997 by me to HE the Governor.

The points were these:

1. In Section 2 which deals with free movement there was an Article on Customs Co-operation which stated:

> "In order to facilitate the good functioning of the customs union and of the internal market, customs co-operation in relation to economic transactions which cross the external borders of the Member States shall be strengthened."

This linkage between the customs territory and the external borders in effects suggested that the boundaries of the Customs Union and the external frontiers coincide. They do not, e.g. Gibraltar and other EU territories. This incorrect linking of "external borders" with "customs union" and "internal market" issues would effectively lend weight to the Spanish argument that because Gibraltar is not part of the customs union, it should not be included within the external borders of the Union. The Treaty text has been corrected to address this point.

2. The second point related to the terms of British inclusion in the future in the Schengen Agreement which establishes a frontierless zone between its members. Until now Schengen has not been a EU matter, it was an agreement outside the EU. However, the Treaty of Amsterdam now incorporates Schengen into the EU framework. In doing so it provides for the UK's exclusion from the application of the Schengen Agreement which is something required by the UK as a matter of policy. Accordingly it will be lawful for there to be immigration controls between the UK (and Ireland that is also excluded) and other Member States. Gibraltar is excluded with the UK so we are subject to the same regime as the UK and Ireland.

However, the Treaty also makes provision for how the UK can join the Schengen Agreement should it decide that it wants to do so at some point in time in the future. In this respect that draft of the Treaty provided that UK could join "on terms agreed with the Schengen countries", which of course, include Spain. In my letter dated 22nd April to HE the Governor I pointed out that if this proposal were to be agreed, Spain would be in a position to impose Gibraltar's exclusion or suspension as a condition of her agreeing to UK's entry in the future. This would be tantamount to allowing Spain to veto our inclusion.

Whilst I was in New York to address the Committee of 24 in early June, I received in New York by telefax from our lawyers in Brussels the next draft of the Treaty - that draft was dated 30th May 1997.

That draft contained two major points of importance to Gibraltar, upon which I wrote directly to the Foreign Secretary, Robin Cook, on 10th June 1997, as follows:-

1. A protocol had been inserted in the Treaty containing a provision that nothing in the Treaty confers powers on the Community with regard to the adoption of provisions determining the precise geographical location of borders between Member States.

It seemed to me likely that it would enable Spain to avoid compliance with many of her EU obligations in relation to Gibraltar by alleging a dispute over the "precise geographical location of borders". Amongst many other matters it might have enabled Spain to refuse to recognise Gibraltar Airport as an External Frontier of Europe. Indeed given that Spain maintains that Gibraltar has no territorial waters, it might even have enabled her to argue that Gibraltar port is not an External Frontier of Europe either. This would, in effect have marginalised Gibraltar from free movement measures in Europe. It might even have enabled Spain to avoid the judicial co-operation provisions in the new draft treaty.

It was difficult to see what such text would add to the current legal situation under Article 227 (sub-clause (4) of which regulates Gibraltar's EU status). On the other hand, even if (or especially if) the new text was ambiguous, it was contained in a protocol which would, if adopted, be an integral part of the Treaties. There may therefore have been a presumption that the text was intended to add something to the present situation. Only confusion (and political uncertainty) for Gibraltar could result. I urged the Foreign Secretary that the UK should not agree that protocol.

2. The second was the Schengen entry veto point which was still in the text albeit as one of two possible options to choose from. I pointed out to the Foreign Secretary that this provided for UK's inclusion at some future date on the unanimous decision of the Council. This would enable Spain to veto a hypothetical UK wish to be included in the future, unless the UK agreed to exclude Gibraltar, which had been Spain's position on the External Frontiers Convention from the very outset.

I was delighted to note that when the next draft text dated 12th June was published both these points had been saved. The Borders location Protocol had been removed altogether and the option chosen to regulate how the UK could enter Schengen in the future was the option that did not give Spain a veto.

The Heads of Government met at the Amsterdam Summit on Monday 16th June 1997, that is four days after the date of that draft. The next draft of the Treaty was dated 19th June 1997. Contrary to the 12th June draft, the draft of 19th June re-inserted the option effectively giving Spain a veto on UK entry into Schengen as the Treaty provision. I therefore wrote again on 23rd June to the Foreign Secretary expressing my consternation that the veto provision was back in and again urging HMG not to place Gibraltar's inclusion in Schengen in the future at the mercy of a Spanish veto.

Although I have not yet received a reply from the Foreign Secretary I have been informed by the Foreign Office through the Convent that HMG has mobilised to retrieve the situation on this potentially vital matter affecting Gibraltar's interests. The European Foreign Ministers are meeting in Luxembourg today. I do not yet have any information about whether the draft Treaty has been changed to remove this threat to Gibraltar's interests. I should emphasise, that the Treaty has not been signed, is still in draft and capable of alteration. It will not be signed until the autumn.

Today's press reports appear to confirm that HMG is indeed seeking to retrieve the position. Today Madrid's ABC reports that the UK does not accept the draft Treaty of Amsterdam produced by the Dutch Presidency due to one of the clauses which makes a "double key" available to Spain to guarantee the frontier controls over Gibraltar in the event of the UK choosing too join Schengen. The ABC report continues by saying that the rejection of the text, if it continues, could provoke very serious problems for the ratification of the Treaty by Great Britain, but that the Spanish representatives have warned that that was the text negotiated and accepted by Spain and that if the UK wishes to modify it it would have to table the question in a new summit.

Today's London Times carries a report under the headline "London to challenge 'dog's dinner' treaty". The Times reports that:-

> "A week after the European Union produced its Treaty of Amsterdam, Britain is claiming that the text has inserted conditions on frontiers and police work that were demanded by Spain but not approved by EU leaders at their summit."
>
> Britain's challenge, to be made by Robin Cook, the Foreign Secretary, at a meeting in Luxembourg today, is one of several complaints about items that slipped into the treaty apparently as a result of the confusion in the hectic final session in Amsterdam last week.
>
> The complaint of Britain and Ireland focuses on the special arrangement which exempts them from taking part in the removal of all frontier controls on the EU's internal borders.
>
> In a move strongly questioned by legal experts, the "Maastricht II" treaty incorporates as EU law the 2,000 pages of Schengen and says Britain may join in but only with the unanimous approval of other States.

> This condition, which creates a potential veto, was requested by Spain, with an eye to its dispute with Britain over Gibraltar and the application of EU law to the territory. "We don't know how this got in, but we're going to make sure it's reversed," a British official is quoted in The Times as saying.
>
> Dutch officials said the confusion over the 142-page treaty was inevitable, given the hectic end-game at Amsterdam. Their text, which an EU ambassador called a "dog's dinner", was the best they could do with their notes and tapes of the final session.
>
> The Dutch are working with officials from the other states to "sort out the loose ends and prepare a final text in the 11 languages for signature by EU leaders in Amsterdam this autumn", they said."

The Government anxiously await confirmation that the draft treaty has been altered to exclude language which may severely prejudice the interests of Gibraltar in the future by putting Gibraltar's interests at the mercy of a Spanish veto over UK's interests at some point in time in the future. This will occur if the existing language stays in the Treaty, when and if a future Government, however unlikely the prospect may seem now, decide to subscribe the Schengen Acquis in whole or in part. A future British Government will be placed in the invidious position of having to choose between advancing the UK's greater interest at Gibraltar's substantial expense or sacrificing the UK's greater interest for the benefit of Gibraltar. The last time that the UK found itself in this position related to the Air Liberalisation Directives, and Gibraltar was indeed excluded.

HON J J BOSSANO:

Mr Speaker, I do not intend to ask questions for clarification but I propose to make a statement reacting to what we have heard from the Government benches. Let me say that I think it is regrettable that all these drafts should have been available and that they have been available to the Government and not to anybody else. I do not really think it is the responsibility of the Government to make the drafts available to us or, indeed, to have to obtain it for themselves under their own steam. If the United Kingdom is the Member State responsible for our external affairs in the European Union then they have got the responsibility for making available in Gibraltar what is available to other

European citizens in other parts of the Union. I have certainly been unable to get it from official Government sources and have had to rely on what is summarised in press reports which is not always the best way in which to make judgements on these things. I hope, therefore, that now that the Government have chosen to record the matter in the House they will make available to the Opposition the text to which they refer in the Government statement. I agree entirely with the ending paragraph that the consequence of putting the United Kingdom in the invidious position that they were in 1987 over either protecting British interests or meeting their obligations towards Gibraltar is that they choose to protect British interests and that if that situation is repeated it is not too speculative to bet on the UK putting its interests higher than ours. The pressure, logically, will be that if it is for the UK to consider entering Schengen there would have to be powerful commercial arguments in favour and that those should be sacrificed because Gibraltar was going to be left out which was in fact a similar position, it was the airlines in the UK that wanted liberalisation and the airlines in the UK that were arguing that the commercial price was too high to protect Gibraltar. What is clear is that even if the clause that has been included in the draft agreement that has emerged from what the Dutch have understood was agreed, even if that clause is removed and the UK can re-enter, presumably, I do not know, because I do not know what the other option is, but presumably if one option is unanimity the other one must be majority, is it not?

HON CHIEF MINISTER:

No, Mr Speaker, the other option is not majority, the other option is through the intervention of the Commission but without the ability on the part of the Commission to impose conditions on entering. In other words, the Commission makes due arrangements for the incorporation of the UK into Schengen.

HON J J BOSSANO:

What is clear is, of course, that the very strong position held over the External Frontiers Convention would be difficult to reproduce in the new system and presumably the External Frontiers Convention of 1991 is not now going to be proceeded with, one assumes from this date. It is clear that there we have a situation where the United Kingdom is putting up a fight to achieve a text that protects Gibraltar and that Spain sees that as being in conflict with its own national interests and I feel that it is absolutely essential that we mobilise the support that we have in the United Kingdom, when the pressure comes on between now and September, to make sure

that the Government in the United Kingdom does not feel that it cannot retrieve what the officials say they do not understand how that got in. It would seem that from the figures we have been given by the Chief Minister it was re-inserted on the 19th June, anybody would think from reading The Times that they had woken up this morning and discovered it for the first time. It is certainly a very serious situation. It is a situation where the only advantage we seem to have over similar previous instances of this kind of thing is that we appear still to be in a position to do something about it. Quite often in the past we have tended to find out beyond the point of retrieving it.

HON CHIEF MINISTER:

Mr Speaker, the Government are certainly willing to make a copy of the latest treaty text that we have available to the Opposition to study it. The reason why the Government statement has been made today is, firstly, that I thought this was a statement that ought to be made in the House and secondly that I was hoping that the solution, in other words to be told, "I am sorry Chief Minister it has been a terrible secretarial error, of course the text is as it was on the 12th when you last saw it." That that might have happened by now and it has not and given that a date for the meeting of this House has arrived before the solution I thought it proper to appraise the House of exactly what is going on. I share the assumption of the hon Opposition Member although it has not been made clear by anybody that the incorporation of the Schengen Acquis into the European Union framework obviates the need for the External Frontiers Convention, although, of course, there is a difference between the External Frontiers Convention and the Schengen Acquis and that is that the Schengen Acquis is for the removal of borders between Member States without erecting an external frontier common to the Union, whereas the External Frontiers Convention would have extended a frontier common to the whole Union. But I agree with what the hon Member suggests and that is that there is now no need for it because Schengen within the European Union plus common visa requirements and a series of other things which can be done outside Schengen between them replicate what the External Frontiers Convention was going to achieve and my guess is that the External Frontiers Convention has now been buried for good. So that is my view on that. Certainly, Mr Speaker, it is the intention of the Government, if this matter is not resolved as I am confident it will, given the degree of activity which I am told is being deployed on our behalf in this respect but that of course the Government will not hesitate to recruit the assistance amongst our Parliamentarians to ensure that their Colleagues in

Government in London fully understand the consequence of this for Gibraltar and our status in the future within the European Union.

ANSWERS TO QUESTIONS

The House recessed at 4.35 pm.

The House resumed at 4.45 pm.

Answers to questions continued.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that this House do now adjourn to Tuesday 22nd July, 1997 at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 6.30 pm on Thursday 26th June, 1997.

TUESDAY 22ND JULY 1997

The House resumed at 10.00 am.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana - Chief Minister
The Hon P C Montegriffo - Minister for Trade and Industry
The Hon Lt-Col E M Britto OBE, ED - Minister for Government Services and Sport
The Hon J J Holliday - Minister for Tourism 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 E G Montado OBE - Financial and Development Secretary (Ag)

OPPOSITION:

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

ABSENT:

The Hon Dr B A Linares - Minister for Education, the Disabled, Youth and Consumer Affairs

IN ATTENDANCE:

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

DOCUMENTS LAID

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

Question put. Agreed to.

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. 13 and 14 of 1996/97).

(2) Statements of Improvement and Development Fund Reallocations approved by the Financial and Development Secretary (No. 3 of 1996/97).

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE ESTATE DUTIES (REPEAL AND CONSEQUENTIAL PROVISIONS) ORDINANCE, 1997.

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to provide for the repeal of the Estate Duties Ordinance, and, in connection therewith, provide for transitional matters and savings to 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 Government had a manifested commitment to abolish estate duty between spouses and to reduce the rate of estate duty between next of kin. However, upon consideration of the amounts involved in the collection of estate duty and the resources that would need to be dedicated to it to collect it effectively and efficiently compared to the amounts actually collected, the Government decided that it would be better to go the whole hog, so to speak, and abolish it altogether, because the categories of individuals that would be left paying the full rate and the reduced category of individuals, namely next of kin, who would be paying the reduced rate in accordance with our manifesto commitment, simply rendered the amounts collected not worth the administrative effort. Hon Members may be interested to know the figures for collection of estate duty over the last six years:

1991/2	£67,000
1992/3	£85,000
1993/4	£583,000

Mr Speaker, it has to be said that that is an extraordinary year due to the incident of one particular estate.

1994/5	£108,000
1995/6	£194,000
1996/7	£40,000

Mr Speaker, underlying Government policy on this matter is that in its operation this tax has, in effect, become iniquitous in the sense that it does not catch the people who most deserve to be caught and catches most easily the people who least deserve to be caught and the reason for that is this: it is an old piece of legislation and therefore it is relatively unsophisticated. It is straightforward to plan your affairs in a way that enables your estate to escape the incident of estate duty and most wealthy sophisticated people actually do that and as the hon Members will see from the figures that I have just read, with one exception, in 1993 or 1994 it is extremely rare for estates to be subjected to the full rigour of the Estate Duties Ordinance. It is therefore mainly small estates from people of moderate modest means that perhaps have worked all their lives and have left a nest egg for their widows or for their families, that are caught and in those circumstances, Mr Speaker, and given the relatively small amounts involved compared in particular with, for example, the loss to Government revenue from a reduction, or rather from an increase in personal allowances of the sort that we announced last year where we are talking about £1.9m, nearly £2m of revenue every time the Government increases personal allowances, those figures compared to the figures of takings from this tax rendered it, in the Government's opinion a justifiable and desirable measure to abolish estate duty. Mr Speaker, the law saves the position in relation to existing estates. In other words, it is only retrospective to the beginning of this financial year and does not apply to any estate of a deceased person who died before the beginning of this financial year on the 1st April. The Estate Duties Ordinance will continue to apply to the estate of any person who died before the 1st April 1997. Mr Speaker, I commend the Bill to the House.

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

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 MEDICAL AND HEALTH ORDINANCE, 1997.

HON K AZOPARDI:

I have the honour to move that a Bill for an Ordinance to consolidate the Medical and Health Ordinance and its amending provisions, to transpose into the Law of Gibraltar Council Directive 77/452/EEC (as amended by Council Directives 81/1057/EEC, 89/594/EEC, 89/595/EEC and 90/658/EEC), Council Directive 78/686/EEC (as amended by Council Directives 81/1057/EEC, 89/594/EEC and 90/658/EEC), Council Directives 80/154/EEC and 85/433/EEC (as amended by Council Directives 80/1273/EEC, 85/584/EEC, 89/594/EEC and 90/658/EEC) and Council Directive 93/16/EEC concerning the mutual recognition of diplomas, certificates and other formal qualifications and the free movement of medical practitioners, dental practitioners, pharmacists and of nurses responsible for general care and of midwives, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services, to deal with the constitution of the Medical Registration Board and to give effect to other amendments relating to various purposes including promotion of international co-operation in the training of medical practitioners who are not nationals of EEA States, through a system of limited registration be read a first time.

Question put. Agreed to.

SECOND READING

HON K AZOPARDI:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill seeks to effect several changes into the registration system and to consolidate the old Medical and Health provisions. It has several purposes which affect all the different professions that are concerned by this Ordinance. In the first place there is a general consolidation and clarification of many of the sections that have been in the 1973 Ordinance, some of which have lapsed by substitution of certain bodies like the consolidation or the coming together, the amalgamation of the different nursing councils in the UK and so therefore there is a clarification in that regard and everything is being

specified as now is the case. There are consequential amendments where we have tried to tie up and clarify certain wording. We have, in line with the now evolved practice, substituted and deleted the word "Governor" and empowered the Minister for Health of the day with the powers that the Governor used to have under the 1973 Ordinance.

The other effect is of course to transpose several EC Directives as has been read out by the learned Clerk just previously. If I can deal with the registration of doctors first. There is indeed a substantial transposition of EC Directives in relation to doctors, nurses, pharmacists and dentists. Generally these are the mutual recognition of qualification directives. The Bill makes provision for the mutual recognition of such diploma certificates and other formal qualifications of doctors, dentists, pharmacists and nurses by transposing into our national law the relevant EC Directives. The Directives in question being principally 93/16 in relation to medical practitioners, 80/154 in relation to midwives, 85/433 in relation to pharmacists, 77/452 in relation to nurses and 78/686 in relation to dental practitioners. All of those Directives taken together provide the necessary measures, we think, to facilitate the effective exercise of that right of establishment and freedom to provide those services as envisaged by the particular Directives and the transposition that is required in Gibraltar. The Community obligations by virtue of the transposition therefore have created a category of doctor, namely the EEA doctor who are automatically entitled to practice in Gibraltar by virtue of their qualifications which are schedule to the Directive and schedule to this particular Bill. The legislation recognises the acquired right of persons who were practising as doctors before the date of this Ordinance. Provision is also made for persons to establish as a doctor in any EEA State to render medical services on a visiting basis as was the case under the previous Ordinance in relation to other fully-registered practitioners. The Ordinance also requires doctors who have obtained particular qualifications if they are to practice certain specialisations, or if they are to set up in general practice, these specialisations are annexed at schedule 3 to the Ordinance.

Dealing briefly with dentists and pharmacists in the EEA context in transposing those Community obligations the existing regime for registering in Gibraltar remains largely unaltered but provision is made in section 23 allowing dentists and pharmacists holding European diplomas listed in schedule 5 in respect of dentists, and in schedule 6 in respect of pharmacists, to be registered in Part 2 or as the case may be, Part 3 of the Register

kept under section 7 of the Ordinance. The Medical and Health Ordinance is further amended to allow nurses and midwives who hold European diplomas listed in schedule 9 to be registered in the appropriate part of the register for nurses and midwives in the Ordinance and again it allows, in section 34, for persons established as nurses or midwives in an EEA state visiting Gibraltar to provide such services as appropriate. Apart from the EEA EC Directive transposition, I should highlight several other aspects which the Bill seeks to do. In relation to doctors generally, the old entitlement and the old ability of registration of doctors who were registered in the UK and indeed of doctors who had a relevant Commonwealth or foreign diploma still kept under the Ordinance, albeit in a different form, but it is still kept by virtue of the fact that doctors who are entitled to full registration in the UK under section 3 of the Medical Act 1983 are allowed to register and those who are registered, who are entitled to be registered under section 19 of that particular Act are also entitled to register, the difference being that section 3 and 19 are the expositions of the full registration and the possession of the UK primary qualification and section 19 is the Commonwealth section, if I can put it that way, the foreign overseas doctor qualification that allows overseas doctors to be registered in the UK. Those are maintained and what the EEC Directives are doing is to extend by transposition the ability of doctors to register if they have certain qualifications and they are listed in the EEC Directive. I do say also though that we have clarified the provisional registration section. That provisional registration section was giving the Medical Registration Board some difficulty because of the tight nature of the wording. When the previous Ordinance was passed in 1973, much water has gone under the bridge since then in the UK and because of the evolution of the systems of registration in the UK and Ireland particularly it is giving the chairman of the Medical Registration Board some difficulty so there has been a need to clarify the wording and the system of provisional registration and that, this Ordinance seeks to do. The Ordinance also creates a system of limited registration. That system of limited registration is very similar to that in the United Kingdom. It is succinctly mentioned in the Explanatory Memorandum. The object of that particular system is to foster technical and social links between Gibraltar and overseas countries by making provision to enable junior doctors and overseas specialists of high calibre qualified in non-EEA states to obtain limited registration and practice in the Government hospital or in teaching clinics under strict supervision and for specified periods of time. These provisions are in line with similar provisions in the United Kingdom and EEA states such as Luxembourg and

contain safeguards to ensure that only doctors of a standard of competence similar to EEA and United Kingdom qualified doctors may practice in Gibraltar. The sections on limited registration are contained in sections 14 to 22 of the Ordinance. I should explain that the nature of the registration is that they are limited, not limited as to qualifications, but limited in time. It is usually contingent on proof of English language experience and certainly professional competence. The registration is linked to practice within a teaching environment and so they would have to work within a teaching hospital approved by the Board, as is the case in the UK under the Medical Act, it would be a teaching hospital approved by the GMC. There are similar systems in the United Kingdom, in Ireland, Luxembourg and, I believe, in other EEA states. The importance of introducing a system of limited registration is also because of the explanation I gave just earlier in relation to the evolution of the registration system in other countries. The fact is that if we did not introduce a system of limited registration akin to that prevalent in other countries we might have a difficulty in registering some doctors in Gibraltar. At the moment we have full and provisional registration. In the United Kingdom and in Ireland they have full provision unlimited registration because some of the doctors that are seeking to come to Gibraltar are in possession of qualifications that entitle them to be registered in the limited register in the United Kingdom, but not in the full register. They have qualifications that are acceptable to the General Medical Council but because they are not fully registered in the United Kingdom, or provisionally registered, then it is difficult to provide for their registration in Gibraltar and we can only do so if we introduce a similar system which will allow us to register these doctors so that they can practice in Gibraltar as indeed they would be entitled to practice in the United Kingdom or indeed in Ireland. The reason of the importance to Gibraltar of all of that background is that because the systems are evolving and because it is now more and more, it is increasingly difficult to get a Consultant's job in the United Kingdom, there is a wealth of good quality practitioners who are seeking to practice elsewhere who may not be registered in the full register who may be registered in the limited register and unless we are able to have a system of limited registration we may curtail the potential pool of applicants that can come to Gibraltar and work within our hospital and we may be limiting ourselves to people who are not registered under any systems in the United Kingdom and that we would seek to avoid. I would stress that the Medical Registration Board will be working very closely with the General Medical Council in relation to the system of limited

registration. Any doctor who wishes to be registered in the limited register in Gibraltar must have an acceptable overseas qualification as defined in the list kept by the General Medical Council, that is at the wish of the Medical Registration Board because they themselves expressed a desire to be linked in this way so that they could monitor, they found it easier that they could effect the GMC list of qualifications rather than having the burden of monitoring the quality of qualifications world wide themselves. The Bill also seeks, moving now from limited registration, the Bill also seeks to provide a system of re-registration of doctors and provides the possibility in future of further regulations allowing specialisations to be annotated against the registration of particular doctors in Gibraltar, doctors who are registered at the moment, not EEA doctors because that is already possible under the particular schedules. The BMA and MRB have been extensively consulted in relation to this Bill. Indeed many of the points brought to the House today in this Bill are points made by the BMA and the MRB. They particularly were concerned at the re-registration points. It was important, I think, to tackle that particular issue. The fact is that registration at the moment in relation to nurses and, indeed, in relation to doctors, is for life and the difficulty that that creates is that the Medical Registration Board have no idea who are the doctors. They have an idea because Gibraltar is a small community and so they may be able to see them in the street, but they have no particular specific idea as to how many doctors they have on their lists are practising in Gibraltar or are occasionally practising and it is, I am advised, far more expedient for the medical interests of the community at large that there be a system of annual registration so that there can be close monitoring by the Medical Registration Board of who is practising in Gibraltar and whether they are indeed doctors that should be practising in Gibraltar at all. I have mentioned the particular sections but that relates to dentists and pharmacists and I do not believe I need to do that again. In relation to dentists and pharmacists there is little change. What we are doing effectively is transposing the EC Directives in relation to both and the systems are remaining largely unaltered in relation to both professions. We are introducing a new section - I believe section 68 of the Ordinance which ties EEA pharmacists from controlling a pharmacy that has been in operation in Gibraltar for less than three years. To an extent that is to attempt to protect our market from a potential flood of applicants in a way that has been done before and tested and I say that because it is a similar section that has been introduced in the UK and the Government are also considering the possibility of further legislation to try to protect the pharmaceutical

market from the flood of potential applicants in a similar way that has been done in other EC countries so that we do not fall foul of EC law but protect all the pharmacy students that have been sent by our Education Department to the United Kingdom or, at least, to attempt to protect them as much as we can. That is not within this present Bill but the Government are considering proposals to that and either they might come by regulation or the Government will seek to present to consider presentation of other legislation before this House.

In relation to nurses, Mr Speaker, apart from the EC Directives, I should highlight that again in relation to nurses, for the reasons that I have expressed before, we are introducing a system of re-registration. For doctors it is re-registration every twelve months. For nurses it is re-registration every 36 months. There is also a concept of re-training as prescribed by the Board. There will be a system of continuous training and refresher courses for those who have not been in practice for a certain amount of time who the Board may feel require refresher courses to continue in practice. There is also provision enabling regulations to be made by myself in future for the registration of Nursing Auxiliaries and Nursing Assistants in a specific part of the Register of Nurses, in the same way as Enrolled Nurses are allowed to register under the Ordinance. There are provisions changing the composition of the Nurses and Midwives Registration Board to add Health Visitors in line with the evolution of that profession in the United Kingdom. There are changes in the composition of the now Nurses, Midwives and Health Visitors Registration Board, we think, to make the Board more representative by adding a Health Visitor, by adding more nurses on the Board, by adding an educationalist on the Board and by injecting a degree of greater democracy in the sense that nurses themselves will have the possibility of electing representatives to the Nurses, Midwives and Health Visitors Registration Board and so they will have their own voice on the Board that would seek to discipline and regulate that particular profession. Again, I have had extensive consultation with nursing management, the educationlists and the union in relation to these sections and again I can say to the House that many of the points made to me by nursing management and the union are indeed reflected in this Ordinance and that all of those sectors are in broad agreement with the provisions included in the Bill. Of concern to them was the re-registration provisions, the greater independence of the School of Nursing and the possibility of having continuous training and the strengthening of ties with the UK Central Council. We expect that an incidental effect of the passing of this Bill will be that the links

and the standing of the Board and the profession in Gibraltar in the eyes of other professionals in other EC countries will be raised by us having a system of re-registration, better control and better training for the nursing professions.

I should make a point in relation to the profession's ancillary to medicine. For the first time hon Members may have noticed that those professions have been given a seat on the Medical Registration Board. That is because apparently it is being considered that legislation may come to be able to regulate the professions supplementary to medicine. Indeed, there is already legislation to regulate those professions - I am talking about opticians, occupational therapists, dieticians, speech therapists and so on. There is already legislation to regulate those professions and to register those professions in the United Kingdom because it is recognised that those particular professions are the equivalent in their fields to other health professionals such as doctors, nurses and midwives and so on and they should be recognised as such by having them register in a professional register and having a professional body monitor those particular professions. To that end it is important that the professions supplementary to medicine should have representation on the Registration Board and that is linked to another section which allows the Minister with power to introduce regulations providing for the registration of those professions and so, hopefully, once those regulations are introduced we will have registration and that registration will be reflected by that particular Board playing a part in the regulation of those professions and those professions will be represented on that Board and that is the effect of those particular sections.

In closing, I should say, Mr Speaker, that the EC transposition is somewhat overdue but we think that the consolidation effort in this Bill will make the registration system more efficient and thorough and certainly more democratic in the case of nurses and midwives and that the Bill, both transposes the necessary EC obligations that we have and falls in line with our aspiration that the registration system in Gibraltar as amended in this Bill will become more efficient and will provide a better system of training and regulation for the health professions in line with our general feeling that affords a Medical Registration Board and the Nurses, Midwives and Health Visitors Registration Board should take a more vigorous line in regulating and leading in their professions. Mr Speaker, I commend the Bill to the House.

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

HON MISS M I MONTEGRIFFO:

Mr Speaker, on the general principles of the Bill I would like to make a few observations. Part 2, Medical Practitioners, Dentists and Pharmacists, Section 8 relating to registration of dentists and pharmacists and Section 9 relating to full registration as medical practitioners, Mr Speaker, for ease of reference I am referring to pages 156 and 158. In the existing Ordinance all three, that is medical practitioners, dentists and pharmacists are registered under the same criteria. If we look at the new Bill before the House in the case of medical practitioners under sub-section 6(c) we are leaving it to the discretion of the Board who can accept higher or lower qualifications than in the UK from a medical practitioner outside an EEA State, yet, when it comes to registration of dentists and pharmacists, section 8(1) specifies that he is registered in the Dental Register or the Register of Pharmaceutical Chemists of the UK under or pursuant to any law for the time being in force in the UK or is in possession of such Commonwealth or foreign other than EEA diploma in dentistry or pharmacy and has such professional experience as would entitle him to be so registered in either of those Registers. As I have already mentioned in the case of medical practitioners with overseas qualifications, section 9 sub-section 6(c) specifically says "in possession of such Commonwealth or foreign diploma other than one granted in an EEA State in medicine and has such professional experience as the Board considers appropriate". Perhaps the Government can explain the distinction or why the same principle has not been applied to the registration of dentists and pharmacists as in the case of medical practitioners.

Moving now to another point I would like to make and that is the Opposition will be voting against the words "the Authority" as they appear in different sections when they refer to being employed by the Authority which means the Gibraltar Health Authority. During my budget contribution I explained our position on this matter fully, we believe that employees of the Gibraltar Health Authority should continue to be employed by the Government and civil servants as they are presently and not become employees of the Gibraltar Health Authority. The last point I would like to make refers to section 31 on page 178 on the admission to register of Nurses, Midwives and Health Visitors of countries other than Gibraltar and the United Kingdom. The Government already announced in the last Question and Answer session in this House that they will be requiring local applicants who

wish to train for nurse registration level to be in possession of five GCSEs. We believe very strongly that a person should be judged by the standard of the training and the passing of the final examination they are required to do irrespective of any entry qualifications. Section 31, Mr Speaker, provides that any person wishing to be admitted to practice as a nurse proves to the satisfaction of the Board that he has been trained in a country or territory outside Gibraltar or the United Kingdom where the standard of training is not lower than the standard of training and examination required under this Ordinance. So we have here a situation where we are talking about the Board being satisfied on the standard of the training and the standard of the final examination only. In effect we could have a situation where our nationals could well go to such countries or territories, train, pass the final examination and come back to Gibraltar as indeed the nationals of such countries and territories can also do. This is another argument why we believe that the Government should not go ahead with the requirement that local residents should be in possession of five GCSEs before they can train for nurse registration level. We hope that after all the points we have raised in the House we are able to convince the Government to allow local applicants to be able to train without the need of having in their possession five GCSEs. We believe this would be an unnecessary and retrograde step. Thank you, Mr Speaker.

HON J J BOSSANO:

I would like to ask the Minister when he contributes again perhaps to clarify what is the position of nurses trained and registered in Gibraltar who are not in the UK register in terms of being able to enter in another EEA State to be able to practice there? There is a reference here to obtaining a certificate from the Board but in fact one of the things in this Directive of 1977 like in so many other Directives is that in the listing of qualifications on titles which we are reproducing in this Ordinance we see that it states that in the United Kingdom somebody described as a State Registered Nurse enjoys the freedom of establishment for England, Wales and Northern Ireland or a Registered General Nurse for Scotland. These titles were changed in amending Directives but in this particular Directive we see how a particular Member State can in fact provide for different parts of that Member State to have a level of independence within the Member State. For example, in terms of the qualifications, it talks about the Certificate of Admission to the general part of the registry awarded in England and Wales by the General Council for England and Wales, in Scotland by the General Council for Scotland, in Northern Ireland by the Northern

Ireland Council for Nursing and Midwives. That shows that there is a Member State but there are, for want of a better word, equivalent of competent authorities in different parts of that Member State.

HON K AZOPARDI:

If the hon Member would give way. That was indeed the position but I am advised now that all those bodies have been amalgamated into a United Kingdom Central Council and that those individual councils no longer exist which is, I think, something that may be relevant to the point the hon Member is making. That is why this particular Ordinance now no longer makes reference to the individual councils, because now everything is amalgamated into one body and the central headquarters is in London, I understand.

HON J J BOSSANO:

I am aware of that, Mr Speaker. I said that this was the original version and that it had subsequently been amended. The point I am making is that here we have an example of where, in a particular Member State, it is permissible and it would have been permissible, presumably, for the registration in Gibraltar to be reflected as something in its own right that would need to be accepted by host countries in the European Economic Area. The point that I am raising and on which I would like an answer is: is it the case that in our legislation we accept the obligation to accept people who are registered in other Member States as reflected in the Directive? The reciprocity does not exist from other Member States unless the nurse in Gibraltar is registered here and in the United Kingdom. Is it that they have to have United Kingdom registration to be able to exercise those rights in another country? Is that the case or not?

HON CHIEF MINISTER:

Well, Mr Speaker, I cannot tell the hon Member whether it is in fact the case but it is certainly intended that that should not be the case and the legislation would have to be corrected if it did not have the effect of entitling Gibraltar-registered nurses to exercise their reciprocal rights elsewhere in the EEA. That is certainly the intention and that is how it should be and another question is whether our locally-qualified trained nurses have the right degree of qualification on which I do not express a view one way or the other because it is not a matter with which I am knowledgeable but certainly from a political point of view I can tell the hon Member that the intention is that it should be the opposite of

what the hon Member has just described. In other words, that the case should be that Gibraltar-registered nurses should be entitled to passport, if you like, into other jurisdictions without the need to first register in the United Kingdom.

HON K AZOPARDI:

Mr Speaker, can I just add to that.....

MR SPEAKER:

This is not your final word?

HON K AZOPARDI:

It is if the Leader of the Opposition has finished.

MR SPEAKER:

All right, on a point of clarification, when you have finished, you have finished.

HON K AZOPARDI:

This is my last word as well, Mr Speaker?

MR SPEAKER:

No, no, if it is a point of clarification, you are entitled to intervene.

HON K AZOPARDI:

Very well.

HON J J BOSSANO:

Mr Speaker, that was the only point I was seeking to have explained and I think it has been explained by what the Chief Minister has said. Certainly, if it is not produced here we agree that it is desirable that that should be the result and certainly we have got no problem with that.

HON K AZOPARDI:

I only want to add to what the hon Chief Minister said which was rather a political point to the medical point which is that we certainly intend that any training that is given in Gibraltar in relation to SRN training which is what the Directive relates to will be as good as any training which is carried out in the UK and that is why we want to strengthen our links with the UK Central

Council who have already been apprised of the proposals in this Bill and they are certainly extremely enthusiastic of the contacts that have been made with nursing management and the explanations that have been given to them. Certainly, it is the Government's view that this should deliver a system whereby nurses registered in Gibraltar, who have been trained in Gibraltar, can go elsewhere. There may be problems from time to time. I think perhaps the Leader of the Opposition was alluding to some difficulties that have been experienced in the past by nurses that have been trained in Gibraltar by registering. An incident in Barcelona comes to mind but certainly we would expect that under the mechanism established in Articles 16 and 20 of the relevant Directive that the Member State concerned takes the matter up as required, if there are doubts on the authenticity of the qualifications and that the aspiration of the Government is indeed delivered as we ourselves seek to do under this Ordinance.

Mr Speaker, if I can deal with the other points made by the hon Lady Opposition spokesman for health, she mentions the difference between section 8 and 9 of the Medical and Health Bill. Section 8 is in terms of the previous Ordinance. Section 9, I agree, is slightly different. There are three possibilities for registration in the full Register by medical practitioners, those listed in 9.1(a), 9.1(b) and 9.1(c). Section 9.1(c) then explains which sub-categories, if you like, of person are injected into 9.1(c) and there is a reference, quite rightly, the hon Lady mentions in 9.6(c) that a person is in possession of such Commonwealth or foreign diploma other than one granted in an EEA state in medicine and has such professional experience as the Board considers appropriate. Let me say that I envisage, and the Board envisages, that there is a certain overlap between those sections. What I was keen to do when I gave instructions to those drafting this Bill at the Legislation Unit, was to preserve the ability of the Medical Registration Board of registering Commonwealth doctors in the same way as those who had acceptable qualifications in the same way that those doctors could be registered under section 19 of the Medical Act. What I did not want to do in transposing the EC Directive is just to create a system where either UK or EEA doctors could register in Gibraltar thus depriving ourselves of a potential market of doctors that could come to Gibraltar who would be able to go to the United Kingdom. That is why there is a reference there to registration under section 19 which, to a very large extent, overlaps with the provision in 9.6(c) which was the old provision, if you like. The only addition is the words "as the Board considers appropriate" and I am advised by the Medical Registration Board that they will consider appropriate

only those qualifications that are considered appropriate in the United Kingdom and so the effect will not be a different one. The Board will not take it upon themselves to decide which qualifications are acceptable irrespective of acceptability by the GMC. They will consult and indeed they do so when it is obvious that a qualification will be accepted by the GMC they will register and when there is a vague area they will consult closely and so the effect will not be that the Board will take it upon themselves to consider qualifications. The Board indeed feel that they do not wish to do that and that is why there is another reference in another section which directly links it to a list held by the General Medical Council in London. The other point that the hon Member makes is in relation to training generally and to section 31 of the present Bill and she says that the Opposition's argument is that there should be no entry requirements and that she cites section 31 as lending support to the argument that because of its mere presence that should persuade us that we should drop the training requirements that we mentioned during the budget speech or during the Question and Answer session. I have to say that while I am going to deal with the points on training and entry requirements in relation to what are the Government's particular views in relation to entry requirements, I cannot see the point in section 31 lending support or otherwise to the hon Member's submission as to entry requirements, purely because section 31 is merely a reflection of section 15 of the Medical and Health Ordinance, 1973, and if that created such a difficulty in the Member's mind, then it was open to the hon Member to amend it throughout the eight years that she was Minister for Medical Services. I really do not see the point in the hon Member's.....

HON J J BOSSANO:

Mr Speaker, the reason why there was no reason to amend it is precisely because there has never been any attempt to introduce minimum entry requirements. We are saying that we are imposing an obligation to accept somebody from elsewhere who may not, in that particular country, have to have five 'O' levels as being suitably qualified to be a nurse in Gibraltar purely on the training they have undergone and the success they have achieved. That is the position at the moment for our own nurses. That is being continued for nurses from elsewhere but is going to be changed for our own nurses, that is the point.

HON K AZOPARDI:

Yes, I understand the point now. I cannot agree that that necessarily is the case. If the hon Member cares to look at the schedule to the Directive, he will see that

many of the qualifications which are scheduled in this particular Nursing Directive are university qualifications. Certainly my advice from the nursing management is that the nursing career is moving quite quickly towards requiring entry qualifications. In the United Kingdom it is five 'O' levels and certainly in the Project 2000 Nurses it has now become a university career and so I cannot envisage that that will necessarily be the case. Of course I cannot speak for other countries such as Greece, and so on, purely because I do not understand Greek, I do not know what the reference in the schedule to the particular qualifications are but let me say that I think that we should, certainly the Government think that we should have entry requirements and we should increase the attractiveness of the education system and increase the incentive of people to succeed academically and increase the pool of applicants that will be able to apply to have nursing as a career and I do not accept the point made by the hon Member during the last meeting of the House that we would unduly restrict ourselves in Gibraltar by having entry requirements purely because in relation to the recent advert placed in the Gibraltar Chronicle for six or eight vacancies for enrolled Nurse training, there were 37 applicants who had more than three 'O' levels. I do not think that it is unduly a high onus on applicants but I do think that it is important and so does nursing management and the Unions for there to be requirements of entry which will help certainly the nursing education list in achieving the system of training and efficiency of the profession in the evolution of the profession that they would like to achieve and certainly the Government's decision was made clear during the last session of the House of Assembly. We stand by the fact that we should have entry requirements. We think that it would be good for the nursing profession. We do not pass any comments on the quality of the profession now. We think the profession has indeed got good standards of care and good quality of nurses but that is not an argument we think to not having any entry requirements. It is the way things are going and it is the way things should go, we believe and certainly it is Government's policy that there will be an entry requirement for enrolled nurse training for SRN training three and five 'O' levels respectively and in due course there will also be an entrance exam for Nursing Assistants and certainly that is the Government's position and I am not persuaded by the arguments put to me by the hon Member and while I accept that she does not agree with the Government's view, that is certainly Government's view.

Question put. Agreed to.

The Bill was read a second time.

HON K AZOPARDI:

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 INCOME TAX (AMENDMENT) ORDINANCE, 1997

HON CHIEF MINISTER:

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

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker this Ordinance amends Part V and Part VI of the Income Tax Ordinance. Part V of the Ordinance lays down the process for the issue of returns, the making of assessments and the settling of objections and appeals. Part VI of the Ordinance, amongst other matters, lays down the penalties which can be charged for failure to comply with the Ordinance. In the majority of cases the settling of the liability of a taxpayer is a straightforward operation. The taxpayer will be sent a Tax Return, he will complete it and send it back within the prescribed time limits and an assessment will be made on an agreed basis. In a significant majority of instances however this is not the case. The taxpayer will either refuse to send in his Tax Return and the information needed to make his assessment or he will send an account of information which clearly do not reflect his true liability. In those cases the failure of the taxpayer to comply with his obligations under the Ordinance start what often turns out to be a complex, time-consuming process to reach the final measure of liability. The process will start with an estimated assessment and if no agreement is reached they end up in the dispute being resolved in the Supreme Court. An unscrupulous taxpayer may therefore be able to delay the settlement of his liability for a number of years. The tax will not be due and payable until the dispute is settled and there are no provisions to enforce collection of the part of the tax which is not in dispute. This means that nothing will be paid until the lengthy process of settling disputed tax liability is at an end. Mr Speaker, the current structure of the Ordinance therefore acts against the prompt and efficient collection of tax due and rewards the unscrupulous to the detriment of the

citizens who comply with their obligations. In those instances where there is a genuine dispute on the interpretation of the Ordinance both the Commissioner of Income Tax and the taxpayers are faced with the fact that the only forum to resolve the dispute is the Supreme Court. This is an expensive procedure for both parties and because of the workload of the Court can import delays which neither party desires. In practice this has produced a stalemate in such areas with disputes being left unresolved for a long period of time. In those instances where the taxpayer has submitted accounts and information which the Commissioner of Income Tax wishes to challenge, the Commissioner of Income Tax has at his disposal an array of information powers in the Ordinance. Some of these powers duplicate themselves but all have one thing in common. There is no accountability. the Commissioner of Income Tax is free to issue formal notices demanding information from taxpayers or those who have information relating to taxpayers with no check on the Commissioner of Income Tax. Where in the case that the demands of the Commissioner of Income Tax had no compliance cost this might be a cause for concern but this is not so. For instance, the Commissioner of Income Tax may form the view that he needs to see and analyse the personal bank account for a company director before he can agree that the drawings shown in the company accounts are reasonable. If the director has not retained these account statements he will need to obtain duplicates from the bank, an expensive investigation going back several years, this may cost him several thousands of pounds. It may well be that the request of the Commissioner of Income Tax is perfectly justifiable and reasonable. What is not justifiable is that there is no cost-effective method of bringing the Commissioner of Income Tax to account to ensure that the requests he makes are reasonable and in proportion to the problem that he is trying to resolve. There is the process, of course, of Judicial Review but this would normally be as costly as compliance with the request however unreasonable that request might be and whether or not the cost provides the taxpayer with a viable solution, depends very much on the financial resources available to the taxpayer. If we were to simplify and make more effective the process of assessing tax and agreeing liabilities, then we have to counterbalance this with a simple and cheap method of resolving disputes and creating the accountability of the Commissioner of Income Tax.

The new Ordinance, Mr Speaker, addresses the problem outlined above by changing the emphasis of the administration of tax away from the tax return towards the making of the assessment and by creating a Tax Tribunal to resolve disputes and act as the forum of

accountability for the Commissioner of Income Tax. It has been long recognised in the Tax Department that the Tax Return is, for all intents and purposes, a voluntary document. It has been an offence to fail to make a return but the chances of proving that offence to the criminal standard are negligible. This reality is recognised and the return now becomes a voluntary document. Mr Speaker this, in a sense, is parallel to the system used in many European countries and now being introduced in the United Kingdom of self-assessment. As a voluntary document it will still have value because it will be the means which enables each taxpayer to inform the Commissioner of Income Tax of his liability before the Commissioner of Income Tax commences the process of assessing liabilities. This process will commence as soon as possible after the 30th September in each year of assessment. At that stage the Commissioner of Income Tax is obliged to assess each person who he has reason to believe is chargeable to tax. Assessment will take place whether or not the person has sent the Commissioner of Income Tax a return or the details which will enable him to make an agreed assessment. If there has been a return, the Commissioner of Income Tax will be able either to accept the information on the return or he will be able to dispute it. If he reaches agreement on a dispute then he will make an assessment in the agreed figure. If he is unable to agree or if there is no return the Commissioner of Income Tax will be obliged to make an estimated assessment to the best of his judgement. In exercising his judgement the Commissioner of Income Tax will be able to use information he has been collating over the past few years on the performance of various trades and various other items. The assessment process will therefore be an informed one. It will then be open to the taxpayer to appeal against the assessment. The appeal will lie to a Tax Tribunal. The previous system of due and payable dates based on the date an assessment is made is replaced by set due and payable dates. Provided an assessment is made in good time the tax will be due in two equal instalments with due and payable dates of the 31st March and the 30th June in the year of assessment. If the assessment is made in March, or later, the due and payable date of each instalment will be 30 and 60 days respectively after the issue of the assessment. The making of an appeal will not by itself delay the payment of tax. If there is a good reason for delaying payment of the tax the applicant will have to make an application for the postponement for the collection of tax. The initial application will lie to the Commissioner of Income Tax but if the Commissioner of Income Tax and the taxpayer are unable to agree the Tax Tribunal will decide on the matter. Postponement will only be effective for a limited period sufficient to have the original appeal determined. In the case of a

disputed liability the Commissioner of Income Tax will, of course, still be able to ask the questions and seek the information necessary to reach an agreement. However, he will not be able to enforce his requests without the agreement of the Tax Tribunal. The information powers which previously were exercised by the Commissioner of Income Tax without accountability have now been amended to ensure they are relevant to the appeal procedure and placed in the hands of this independent appellate body. If the Commissioner of Income Tax makes a request for information which the taxpayer feels unable to answer because he feels it is too onerous or irrelevant he will have to justify that request to the Tribunal and the request will only be enforceable if the Appeal Tribunal agree with it and adopt it as their appellate order. The Tribunal will have power to summarily determine penalties where the taxpayer fails to comply with one of its information requests. The Tribunal will be free to add any request of their own at any stage of the appeal process when the matter comes before them or indeed to summon witnesses to appear before them. The Tribunal will also be able to enforce proportionality by being able to determine and appeal at any stage in the process whether the Commissioner of Income Tax is still seeking information or whether he is not seeking information. The Tribunal will be the first and final Court for findings of fact and an appeal from the Tribunal to the Supreme Court will lie only where there is a point of law in dispute. The aim in creating a Tribunal is to bring into existence a body which is easily accessible and relatively cheap top use. Proceedings before the Tribunal will therefore be informal where possible and pleading before the Tribunal will not be limited to lawyers. The members of the Tribunal will be drawn from those whose experience is such that they are likely to have a sound understanding of the principles of tax and the realities of the business world. Access to the Tribunal will be available for all appeals made from the date that the new Ordinance comes into force. In case of objections or appeals which have been made before the date of entry into force access to the Tribunal will be available for those taxpayers who signify in writing to the Commissioner of Income Tax that they wish to submit to the jurisdiction of the Tribunal. In other words, although the law will not impose retrospective effect on this Tribunal, if there is a taxpayer that has a historical tax problem which arises before the date of the Ordinance and the taxpayer wants to voluntarily submit the dispute to the Tribunal he will be allowed, if he exercises that choice. The law will not impose retrospection in the changing of the appeal procedure. All information notices outstanding at the date of entry into force will be processed in accordance with the previous legislation. The simple aims of these

changes in legislation are to make it quicker and easier for the Commissioner of Income Tax to agree liabilities while ensuring that the means to attain that speed and ease do not place excessive powers in the hands of the Commissioner of Income Tax. The Tribunal, by exercising an independent view on the matter, will enable the Commissioner of Income Tax to deal with unreasonable or spurious arguments with efficiency whilst ensuring that his own actions are reasonable and in proportion to the problem he is addressing. The placing of the information powers in the hands of the Tribunal will not diminish the effectiveness of the Commissioner of Income Tax enquiries where they are appropriate but will add to their force in that the recalcitrant taxpayer will know that the request comes from an independent body and that body itself will be able to determine penalties for failure to comply with the requests. Mr Speaker, 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, on the general principles a number of points cause us concern on this side of the House. The first point of concern is that if indeed the powers the Commissioner presently has under the Ordinance do not give him the teeth, if you like, to deal with late payers of tax in an efficient manner then there is always the possibility to give him those teeth. The removal of the powers of the Commissioner and replacing them in the hands of the Tribunal perhaps with a greater degree of power in the sense that they will be able to pass fines for late payments and everything else, remove from the civil service and from the Commissioner of Income Tax those powers which we believe should be held there. The hon and Learned the Chief Minister has just mentioned that the Tribunal will be composed of people who have experience in tax and other matters and are familiar with the business. Yet, in the Bill before us there is no mention of the criteria which the members of the Tribunal will be required to satisfy, simply that they will be appointed by the Chief Minister. Another point that was mentioned by the Chief Minister was this question of people not paying in between the termination of the tax in respect of taxes that are due. From my reference to Section 79 which deals with the current position in respect of appeals against assessments, my understanding of that is indeed that it says in sub-section 79(2)(a) "the bringing of an appeal under this Ordinance shall not leave any person pending the determination of the appeal from any liability to pay tax under this Ordinance". It seems that the provisions in fact are there and are being

passed on to the Tribunal. In effect, what the Bill does or intends to do, I assume Mr Speaker, is to put the boot on the other foot - instead of the Commissioner of Income Tax at present having the ability to seek information, to enquire before making a valued assessment, if a voluntary return is not made an assessment is made and then it is up to the individual taxpayer if not satisfied with an assessment to take matters on with the Tribunal. I assume from that that if a taxpayer receives an assessment which is inferior to his income he would happily accept it and run. I am not quite sure whether that person will be caught up with in the new provisions.

The concerns which lead us not to support this Bill, Mr Speaker, stem from the total removal of powers from the Commissioner in respect of employers, partnerships which will not be required to file a return, will not be required to give information as and when they are so required to do. Mr Speaker, we believe that the appointment of a Tribunal is a very dangerous point. These are people who will be outside the civil service, presumably, who will be directly involved for the first time - in Gibraltar's history certainly - in income tax matters. We believe that when a step like that is being taken everything possible has to happen to ensure that that Tribunal and we speak before we know who the persons are, so we do not wish to cast aspersions on anybody, but the dangers of individual people in a community the size of Gibraltar, 30,000 people is a small village. With a village of 30,000 people having people appointed as Tribunal members determining the income tax of individuals we think is difficult. We think that the powers that the Commissioner has, if they need be strengthened, should be strengthened, but that to turn it in this way where the powers to even fine people we believe to be excessive and we will not be supporting the Bill.

HON J J BOSSANO:

Mr Speaker, the Government have defended this totally new concept of a Tribunal on two counts. One is the i inefficiency of the present system in terms of the length of time it takes to deal with appeals in the Supreme Court which in any case is the route still open presumably for somebody that is not satisfied with the decision of the Tribunal and, secondly, on the basis of accountability. I do not know whether the accountability comes about from the Tribunal to the person that appoints a Tribunal. If that were the case, certainly I do not think it is an accountability that would be welcomed by anybody in Gibraltar other than those that think that they stand to benefit from that line of accountability. But I am not aware that people have complained in the

past that there has been bias in the assessments made by the Commissioner because the Commissioner is not accountable to anybody. The Commissioner, like any other civil servant, is accountable to the extent that what he can do is what the law allows him to do and no more and no less and certainly he is required to deal with every client in accordance with the law and not discriminate between different clients. So I do not see where there is a problem of accountability about the present arrangements under which the Income Tax Department makes assessments on persons and, of course, for the vast majority of the taxpayers who have PAYE and little else, this makes no difference. The vast majority of the taxpayers will still be in a situation where their employer makes a return and is required to make a return to the Tax Office about the wages and the salaries he pays his employees. He is in the fortunate position not to have to do the same thing for himself so under the new provision the owner of the business happily gives the Tax Office all the details of all his employees and salaried staff but if he does not want to there is not longer a requirement that he should tell the Tax Office what he is earning himself. How that is better, more accountable and more equal treatment than the system we have got now is something that I am unable to fathom. It seems to me that when the Chief Minister talks about unscrupulous taxpayers, presumably all the things that are being taken away were put there in the first instance in order to deal with unscrupulous taxpayers, that was what they were there for. I do not see how removing them is going to make it more difficult for the unscrupulous taxpayer. If anything, it will make it easier. Presumably, we will have a situation where this will be reflected subsequently and we are not prepared to give our support to a piece of legislation which changes the foundations of the tax collection system. It is obvious that nobody likes paying tax and it is obvious that those that can avoid it do their best to avoid it and there is an entire industry called the tax avoidance industry where for the first time in the UK in a budget the new Government in the UK has started questioning tax avoidance as opposed to tax evasion which was this dividing line between what was a legitimate use of the loopholes provided in the law as opposed to simply ignoring the law. It will certainly no longer be ignoring the law not to make a Tax Return because all the Commissioner can do to people who are not on PAYE is to say, "please will you tell me how much money you are making so that I can make you pay tax on it?" The sensible thing, in terms of tax avoidance, is not to tell the Commissioner and if has got it wrong by going over the top then you tell him and if he has got it wrong by underestimating it then you keep your mouth shut and pay up. I do not see how that can be avoided with the provisions that are here and I would have thought, if

the purpose of the exercise is in fact to make sure that the tax collection on those who are not on PAYE is more efficient so that the burden of the fiscal policy falls evenly on all sections of the community, then it seems to me that this is taking us further away rather than pointing to that objective.

HON CHIEF MINISTER:

Mr Speaker, I had given the Leader of the Opposition a private indication of the underlying thinking and needs of this particular piece of legislation. It is a matter of some regret that the points that they have made, which are of course entirely legitimate points, but it is regrettable that in the points that they have made they have not recognised the indication that I gave the Leader of the Opposition about this legislation. The Government have consulted closely with the entire Finance Centre industry and has explained to them the purpose of this legislation and why the Government consider that it is essential that this legislation be introduced. That thinking has been accepted by the Finance Centre Council and all the constituent parts of it. I do not know, it may well be that the Leader of the Opposition did not indicate to the hon Opposition spokesman that has led to the opposition in this matter the observation that I made to him, if he did not, it would be regrettable. However, I am not simply, for the satisfaction of answering him and for the satisfaction of defending the Government from the assertions and the underlying points that the hon Members have made, I am not, for those purposes, willing to sacrifice what is, and everybody appears to accept, a fundamental interest of Gibraltar which is being protected by this legislation. Therefore, I will not address the points made by the hon Opposition spokesman about giving teeth or not giving teeth or removing powers from the civil service or not removing powers from the civil service, except to say this, Mr Speaker, there are several instances of lay staff tribunals which adjudicate the interests of the citizens without requiring the citizen to go to the expense of the Supreme Court, for example, the Rent Tribunal, the Industrial Tribunal and the Trade Licensing Tribunal. I suspect that the average taxpayer, the average citizen, will much welcome that if one wants to dispute a point with the Commissioner of Income Tax, a person that has the full resources, the financial resources of the Government behind him, that the average citizen will welcome the Government placing at the citizen's disposal a mechanism which enables the citizen to have a quick and cheap method of challenging the exercise of power by the executive rather than what happens now, which is, that the cost of challenging the Commissioner of Income Tax is so lengthy and expensive that most citizens give in and therefore this can often

lead to an excessive use of power by the administrative machinery.

Mr Speaker, the hon Member said that the existing law puts the boot on the other foot. It does so but not in a way that prejudices the taxpayer because the position already is that if the taxpayer fails to submit a return, the Commissioner of Income Tax, if he has his wits about him, sends in an assessment in the absence of a return. Even under the existing law, whether or not there is a return, the Commissioner of Income Tax can, if there is a return, dispute it and then one is stuck in years of dispute in which the practice, that the hon Member knows, is that no tax is in fact paid until the matter has gone through the Court of Appeal or if there is a return, the Commissioner of Income Tax disputes it if he does not accept it and says to the taxpayer, "I do not think this return is correct, here is an assessment on the basis that I think is right regardless of what you told me in your return". The position now will be that the taxpayer sends in a return, if the Commissioner of Income Tax accepts the return, just as he does now, he simply raises an assessment on the basis of the information provided in it. If he does not accept the return he is still free to levy his own assessment regardless of the contents of the return. If no return is filed he issues assessments. This is where the change now occurs. At the moment the Commissioner of Income Tax is able to say to the taxpayer, "I do not accept your return, give me this back and that information to enable me to levy my own assessment on you because I do not believe your return". The new procedure will be that the Commissioner of Income Tax may do that, or rather may levy an assessment, without the powers to demand information but he still has the right to put whatever figure he wants in that assessment. In other words, he uses his judgement. If the taxpayer is aggrieved by that assessment he may appeal in order to discharge the assessment and it is up to the taxpayer to produce to the appellate body whatever information the taxpayer can in order to have the assessment appealed against removed successfully. Mr Speaker, the position of the taxpayer who gets an assessment who fails to put in a return gets assessed by the taxpayer and then says, "This is fine, this is less than I was due to pay and therefore I will pay". This is happening now and has always happened and that is not something which will be facilitated by this new legislation. That, as the hon Member well knows has always been the case and is still the case and happens now under the existing legislation. Mr Speaker, I just want to make clear that if by the phrase, "Put the boot on the other foot" the hon Member says that this puts the taxpayer at a disadvantage to the position that he was in before then I would just like to say that this is not a

correct analysis of the provision. If, on the other hand, he means by "putting the boot on the other foot" that this is onerous or excessively onerous on the taxpayer then of course that is not consistent with some of the other observations which have been made which is to the effect that this is a weakening of the regime..... I will give way to the hon Member.

HON A ISOLA:

Mr Speaker, what I meant by, "putting the boot on the other foot" was simply the onus of providing the documentation is now up to the taxpayer and not at the demand or the request of the Commissioner.

HON CHIEF MINISTER:

In other words, if the taxpayer wants his appeal against an assessment to succeed he has got to provide information as opposed to the position now which is that the Commissioner of Income Tax simply demands the information. Therefore what is happening in effect is a postponement in time of the ability to link the production of information with the collection of revenue by the Government. But that postponement of time leads to greater accountability and leads to a balancing of the respective rights and interests. It is clear to me that the hon Opposition Member has not had a brief conversation with the Leader of the Opposition on this matter, but it does not matter, I shall speak to him privately afterwards perhaps.

I do not know what is dangerous about a Tribunal in a small community like Gibraltar. In a small community like Gibraltar we have Justices of the Peace who are locals, we have Stipendary Magistrates who are locals, we have Judges of the Court of First Instance that are local, we have Judges of the High Court, of the Supreme Court, that are local and I think it is a dangerous argument and one to which I certainly would not subscribe and I am surprised to hear that the Opposition Members might subscribe to it, that because we are a small place we are not fit to adjudicate between ourselves in relation to internal matters. I am sure that is not the philosophical point that the hon Opposition Member was trying to put and just as Gibraltarians are quite capable of adjudicating between themselves on matters of industrial tribunal, rent tribunal, Trade Licensing Ordinance and the various courts in which Gibraltarians have so successfully served in the past, I have no doubt that the Income Tax Appeals Tribunal will not be an exception to the long history that there is in Gibraltar of fair adjudication on disputed matters.

Mr Speaker, dealing with one of the points made by the Leader of the Opposition when he asked in my submission with an extraordinary degree of mischief whether accountability was only intended to secure accountability of information to the point to the person appointing the Tribunal, it ought not to be necessary for me to remind the hon Member that it was him as Chief Minister who altered the law in order to give him as Chief Minister access to taxpayers' tax files, something which had been sacrosanct before and which had never been allowed and he obtained, certainly under the guise of seeking statistical information, that he put into place a mechanism by which he would call for the production of information and records including taxpayers' files from the Commissioner of Income Tax's office to his office. I never said publicly, as well I might have..... I shall give way to him just as soon as I finish making the point, Mr Speaker, so that he can defend himself. I did not say when he did that that he was doing it in order to find out the private details of taxpayers as well I might have done because that mechanism certainly lent itself to that, this mechanism does not lend itself to that because, Mr Speaker, if the hon Opposition Member who is constantly arguing and in large measure with support from the Government, when we were in Opposition and he was in Government, with support from us in Opposition that this community should seek to move forward constitutionally rather than backwards. In England the power to make appointments to the Tax Appeal Tribunal is exercised by Ministers. In Gibraltar, therefore, it can either be a Minister or I suppose if he had preferred it, he could have given the power to the Governor but I suppose that when an English Act contains a power giving a Minister the ability to make appointments to a Tax Appeals Tribunal, the Opposition does not leap to its feet to say, "Is the hon Minister in Government seeking to put that power in so that they can seek information, so that they can have accountability to them of the details of taxpayers that go through the Appeals procedure". I think that the hon Member does both the administration and indeed the Government a disservice by suggesting that that is the reason for this. I will give way now, Mr Speaker.

HON J J BOSSANO:

Mr Speaker, the first thing is of course that I want to categorically deny that there is anything in the change that was brought in the law seven years ago that enabled me then, or him now, to look at the individual tax paid by one individual taxpayer. In fact, all the statistics that have been produced, even the statistics, for example, on the profits of banks were produced on the

basis of the banking sector or the construction industry and if I have asked the Chief Minister for breakdowns of those areas, it is in the knowledge that that information which is produced statistically cannot identify an individual. To the extent that when the Commissioner of Income Tax was asked by the Financial Secretary to provide breakdowns of incomes for the Spanish pensions negotiations with the United Kingdom, he was unable under the provisions of the law to give a breakdown to such a degree that there was a category of income in which there was only one person. In fact, he is wrong and the fact that he is wrong now and he was wrong then did not prevent them from saying it then. The second thing is, of course, that we actually decided, in order to improve the collection, to engage somebody from outside the civil service to chase up arrears of PAYE in those cases where the Commissioner delegated that job. That was seen as a major inroad into the independence, impartiality, accountability and fairness of the system. We now have individuals appointed by the Chief Minister of Gibraltar who will be able to make assessments and of course we can agree in this House that the Gibraltarians are so morally correct that they will never show any bias against friends and enemies. The 15 of us may agree but I doubt if the other 29,985 would necessarily agree with us. Therefore we have a question where this is a major movement in a direction of which there is no parallel because when somebody goes to a Rent Tribunal is because he wants his rent reduced and if somebody goes to an Unfair Dismissals Tribunal it is because he has been given the sack but for somebody to go to an appeal against the assessment made on him by the Commissioner, presumably the first thing he will ask himself is, "Are the people who are going to decide whether to lower my assessment or to increase it, my friends or my enemies?". However justified or unjustified it may be, that will be a question that they will ask and it is not that we are saying that we want the appointment of boards to be made by the Governor instead of by Ministers, in fact we introduced a change precisely because since 1972, when I arrived at this House, it had always been argued that the Governor, in domestic matters, meant the Government and that therefore in fact the Governor was doing no more than rubber-stamping the political decision of the Government in defined domestic matters. When that was questioned at one stage, for the avoidance of doubt we thought it was necessary to reflect in practice what had always been there in theory and we will support that measure but he has chosen what has been described previously by people close to him as a highly sensitive area which ought not to be touched at all. I think for the sake of recording the truth in this House let me make clear that I categorically reject that at any one time in the eight years I have asked for individual tax files of

any individuals to see whether I could raise his tax or lower it.

HON CHIEF MINISTER:

Without for one moment suggesting that I agree with what the hon Member has just said, in fact, I do not agree that the amendments that he introduced did not give him the ability to call for that. Whether he actually called for it or not of course is a matter that I cannot possibly know, but that the amendments to the law that he introduced would have enabled it, is incontrovertible. Mr Speaker, what is clear to the hon Member, because he knows, is that this is an area that the Government touches, this is an area that he knows needs to be touched for reasons that I have confided with him and therefore I repeat, Mr Speaker, my regret that there has been no accommodation of that communication in the approach that the hon Members have taken to this piece of legislation and I can simply just once again reflect the Government's disappointment that the hon Members have not recognised the need for this particular legislation to be enacted. Mr Speaker, I do not agree that 29,000 Gibraltarians will now feel more exposed because their right of appeal is to a number of other Gibraltarians given that at the moment the man with all the power over them is a Gibraltarian, who is the Commissioner of Income Tax. Mr Speaker, I do not proceed on the basis that the only honest people in Gibraltar are civil servants. The hon Opposition Member may take the view that only civil servants can be trusted to do the right thing. I can think of many people who cannot be trusted to do the right thing who in the past have been trusted to do the right thing but the persons that the Government would appoint will certainly be people that the whole of Gibraltar can have confidence in who will do the right thing. I think that there is an element of duplicity between the position that the hon Members are taking on the composition of the Appeals Tribunal and the position that they claim to take in terms of their constitutional advancement. Let us say for one moment that there was not, let us say that we were sitting in Ruritania, an independent country, who does the hon Member think should then appoint the Appeals Tribunal? Is he saying that such is the mistrust of one Gibraltarian of another that we are not viable as a community even to the extent of making our own provision for our own tax collection system and our own appeals procedure in relation to tax? Mr Speaker, the hon Member may say what he pleases to score whatever political points he likes but certainly the Government do not accept the criticisms of the hon Member in relation to the composition of the Appeals Tribunal. This is a system that works everywhere else in

Europe and I do not accept that Gibraltar needs to be different to that. Mr Speaker.....

HON J J BOSSANO:

Mr Speaker, we are against the introduction of the Appeal Tribunal. We think that the machinery that exists now for appeal gives sufficient protection to both the Tax Office and the taxpayer and if it needs amending to improve it then it should be amended. The move to take it away and put it in the hands of a number of unknown persons with the total freedom for any Government, whoever we want there, is a major departure and has nothing to do with any other consideration about anything else. Of course, I have no doubt that if it has been warmly welcomed by people in the Finance Centre they must see themselves paying less tax not more tax as a result of this. I cannot imagine that if the Appeal Tribunal has gone down so well it is because they are actually anxious to increase their tax payments. As far as I am concerned it has nothing to do with Ruritania, if we were in Ruritania we probably would not be sitting here, given the reactions that one hears the Chief Minister offering us. If we were in Ruritania we would already all be up with our backs against the wall facing a firing squad. It is a good thing we are not in Ruritania. It is not because I happen to be Gibraltarian-born as opposed to anything else, it is that it would be difficult in a town in the United Kingdom of 30,000 people if one were to find persons with the responsibility of assessing the tax on somebody and to find that person with no connections at all with possible conflict of interests, because of the smallness of the place not because they happen to be Gibraltarians, it would still be the same in a town of 30,000 people in the United Kingdom with no Gibraltarian presence. The whole idea of the independence of the civil service, which they have defended so much in the past is not that people are less sinners or more sinners if they happen to be civil servants, but that they are prohibited, by civil service rules, from going into competition. It would be very odd if one had a situation where in the Tax Office somebody was able to ask for everybody's account in a line of business not to make an assessment but to work out the profit margins so that he could set up his own business in competition with them, that is the reason why the Tax Office is supposed to be less of a risk of the information being used for somebody else, for something else. Of course, people do not think that tax paying is a popular occupation whoever does it, but that is not the issue.

HON CHIEF MINISTER:

Mr Speaker, the Finance Centre Council does not agree with this legislation because they think that they now have to pay less tax, they agree with it because the Government, as I have done to the Leader of the Opposition, have explained to them in detail the reasons for this legislation and they have accepted it. The Opposition Members now propose to reject it and the reason is not that they pay less tax it is, because it is clear from their reaction, that they appear to be more concerned and they are more sensitive to the interests of Gibraltar than the hon Member is and of that I have now been left in absolutely no doubt whatsoever. If the hon Member believes that the existing system provides a sufficient machinery to aggrieved taxpayers then let him simply settle for the fact that we disagree. The existing system does not provide the taxpayer with an adequate machinery unless the taxpayer wishes to engage the Government in full-blown litigation in the Courts of Law with all the costs that that entails. So the Government rejects the view of the hon Opposition Member that the existing legislation provides sufficient machinery for the hon Opposition Members. The hon Opposition Member may think that it is difficult to avoid conflicts of interest in this community. He has expressed that view. I disagree with it, presumably if his concern about the inability to do justice in a community of 30,000 people could not be safeguarded because we are too small to find people without a conflict of interest, I am surprised for example that in the eight years that he was in Government he did not repeal, he did not amend the Laws of Gibraltar to do away with the jury system, for example, where you have got to find nine or eleven or twelve Gibraltarians to adjudicate on people that they know, whose families they know, who may be neighbours..... These are things which are implicit and inherent in the fact that Gibraltar is a small community. The hon Opposition Member may be willing to advocate for unviability in Gibraltar of certain things which are viable elsewhere because we are too small here. It is not a philosophy to which I subscribe and it is not a philosophy which is consistent with all his arguments in the past on constitutional matters and therefore it is with confidence that the hon Member's arguments are mistaken in this respect, that we simply disagree profoundly on matters of policy in this area but I have to say, finally before I sit, that it is also a matter of profound regret that the hon Member has ignored what I said to him in relation to this matter privately.

Question put. The House voted.

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

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 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 INCOME TAX (AMENDMENT)(NO 2) ORDINANCE, 1997

HON CHIEF MINISTER:

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

Question put. Agreed to>

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Ordinance amends the Income Tax Ordinance to implement Directive 77/799/EEC, the Mutual Assistance Directive in relation to the exchange of tax sensitive information between the competent authorities of Member States. This is a long-standing Directive which has been in negotiation for some years. The length of the negotiations reflect drafting problems in the Directive whereby Gibraltar was, by inadvertence of the Foreign and Commonwealth Office, omitted from the list of competent authorities. Despite this act of inadvertence the advice we have received is that the Directive has to be implemented regardless and we have therefore spent extensive time and effort in

reaching a means of implementing the Directive which maintains our constitutional position and prevents others from circumventing that position. The legislation before the House does not stand on its own. Concurrent with the passing of this legislation there will be letters of comfort from the Commissioners of the Inland Revenue and the Foreign and Commonwealth Office which guarantee our position in respect to the operation of the Directive. The free exchange of information between tax jurisdictions is only prevented by the secrecy provisions which each jurisdiction has. In the case of our own Ordinance, Section 4 prevents the Commissioner from broadcasting the information he receives. The key element of the mutual exchange of information is therefore that modification of the secrecy provisions to allow information to be transmitted to other parties. In the case of the Mutual Assistance Directive the medium of exchange is the so-called "competent authority". Each Member State has one and the aim is that the secrecy provision of the various States are modified to allow the transmission of information by the competent authority of one Member State to the competent authorities of other States provided that a series of conditions are met. In negotiations with the Inland Revenue we have secured that the Government of Gibraltar will be able to appoint the Commissioner of Income Tax as the sole and exclusive competent authority for Gibraltar and that the Inland Revenue will authorise him on that basis. The Inland Revenue will send a copy of the authorisation to the other Member States and they will be informed that he will be the only point for Gibraltar tax information. Mr Speaker, the problem, originally arose because the annex to this particular Directive, which is a 1977 Directive, when listing the competent authorities, in other words, the tax administrators in Member States with which other Member State tax administrations have to communicate for exchange of information, the United Kingdom omitted to make provision for Gibraltar in the sense that they did not say, UK - Commissioner of Inland Revenue; Gibraltar - the Commissioner of Income Tax. It simply said UK - the Commissioner of Inland Revenue. Mr Speaker, we have also secured from the Inland Revenue a statement in the strongest terms that the agreement and actions which have led to the implementation of the Directive confer no jurisdiction in whatever form, past, present or future on the Inland Revenue in relation to Gibraltar tax matters. Where any consultations take place under the Directive which relates to Gibraltar the Commissioner of Income Tax will be present and will be able to veto any proposal with specific application to Gibraltar. In terms of proposals with wider application we have the undertaking of the Inland Revenue that they will make their best endeavours to reach a common position with the Commissioner of Income Tax. The legislation as

implemented enables the exchange of information with other Member States. For this purpose the United Kingdom is not another Member State and no information can or will be exchanged with the Inland Revenue. Mr Speaker, the system of exchange is mutual and the legislation contains protection to ensure that there is mutuality and that the information is not misused. Each State, in an exchange, must observe similar standards of confidentiality in respect of the information and the information can only be used for tax or tax-related prosecution purposes. Information will only be exchanged where the receiving State is not barred by legal or practical reasons from reciprocating. For example, if the other participating State did not recognise the jurisdiction of Gibraltar it is difficult to see how exchange can take place. The nature of information exchanged falls into three categories:

a. information held on specific files which would be useful to other jurisdictions. This is spontaneously exchanged;

b. categories of information agreed between Member States. This would usually involve the agreement of the category and, where necessary, the obtaining of information to exchange. An example would be information on bank deposits held by foreign nationals;

c. replies to requests from other Member States, this is the third category. The other State can ask the Commissioner of Income Tax for specific information on a named taxpayer and the Commissioner of Income Tax is obliged to make the appropriate enquiries and exercise the appropriate information powers. Where the Commissioner of Income tax is able to obtain the information requested he then sends it on to the other State.

The nature of the information which is subject to exchange under the second and third mechanism is, to a great extent, dependent on the information that the Commissioner of Income Tax is able to obtain. On the one hand, any information power which the Commissioner of Income Tax can exercise in respect of a Gibraltar taxpayer must be applied to the taxpayer of other Member States in similar circumstances. On the other hand, where the Ordinance does not give the Commissioner of Income Tax the power to obtain a category of information from or about a Gibraltar taxpayer in specific circumstances then there is no need to create that power to satisfy other Member States' requests and the Commissioner of Income Tax is not able to use those powers to satisfy a request from abroad. The

implementation of the Mutual Assistance Directive is the painful part of inter-state co-operation in tax matters within the European Community. At some stage we may wish to consider seeking the advantages of co-operation by way of arrangements on the lines of the old ECD tax provisions with other States. We have a commitment from the Foreign and Commonwealth Office to help us in this area. In other words, Mr Speaker, usually the argument against reciprocal tax treaties is the information giving clause. Well, if there is already a legal mechanism that requires the information there is no reason to deprive yourself of the considerable advantages of having tax treaties for the generation of business. 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 and that may explain why we did not feel the need to support anything else which disappointed the Chief Minister so much. Certainly, we do not accept that many of the elements in that other Bill are needed or relevant to this one. Since we are not convinced of that argument that argument has not been taken into consideration by us. We are looking now at a situation where we have got a Directive of 20 years ago. The United Kingdom has had ample opportunity in those 20 years to do something about providing in the definition of "competent authority" what it means in Gibraltar. The Directive was amended in 1981 to include in addition to the Commissioner of Inland Revenue the Commissioners of Customs and Excise for the purpose solely of value added tax. The view that was taken in London about the possibility of including a specific reference here was that it would create a problem with Spain opposing such a change. Well, it seems to me that if Spain wants to oppose a change in respect of Community law saying the Commissioner of Income Tax in Gibraltar is the competent authority, then they should not have the right to ask for information. I think it is an entirely defensible position to say that in the last 20 years we have not implemented this Directive because, in fact, we are not included in the definition of the "competent authority". We have never accepted the definition for the United Kingdom which says that it is, "the Commissioner of Inland Revenue or their authorised representative" can in fact be stretched to mean that the Commissioner of Income Tax in Gibraltar is the authorised representative of the Commissioner of Inland Revenue. We always took the view that one can only be the representative of the Commissioner of Inland Revenue to obtain as their representative, for them,

either information or tax which they are entitled to obtain directly and since income in Gibraltar is not taxable in the United Kingdom the United Kingdom Commissioner of Inland Revenue, who is the competent authority, cannot either directly or through their authorised representative pursue the powers in the Directive to seek information on other people. In fact, we have been told that there is an exchange of letters, as a result of which other people will be told, that the point of contact in Gibraltar is, the Commissioner of Income Tax and, of course, the law makes clear that since another Member State does not include the United Kingdom the information cannot be provided to the United Kingdom and therefore cannot be provided for a third country via the United Kingdom because it would have to be put in the hands of the United Kingdom first unless one sends it in a sealed envelope saying, "Don't open until it has got to Madrid" or whatever. I am aware that this particular issue was coming to a head because the references, the vague references that the Chief Minister has been making was the fact that at the public meeting organised by the Self Determination Group he mentioned to me in the corridors that there were now infraction proceedings very near starting on this and that we needed to do something to implement this Directive and that the Government was seeing how it could limit, in a damage limitation exercise, limit the effect that it could have. It seems to me that the limit is very simple. If other people want to have the right and impose on us the obligation to provide them with information then they should do the right thing and include us in the list. If they do not want to include us in the list then they do not have the right to ask for information. The law says that the Commissioner will act as the competent authority within the meaning of the Directive. He may be asking as the competent authority but the Directive does not say that he is one. Of course, the practical effects of this law in terms of the refusal of information if other people are not willing to provide this information are unlikely to be tested in practice because I cannot imagine the Commissioner of Income Tax actually writing to other jurisdictions asking them to provide information on Gibraltar residents who may be making returns in other Member States in order to avoid paying tax in Gibraltar. The whole underlying premise of attracting people to Gibraltar is on the basis that they will be better off in terms of the fiscal impact on their incomes. If Gibraltarians are going elsewhere to pay less tax, then the whole business of us having reservations about providing information would be irrelevant because the information we would be providing would be that people were being taxed a higher level here than in another Member State. Of course, it is questionable whether in fact another Member State is protected legally by the

Directive which says, "that they have to provide that information to a competent authority and only to a competent authority", and the list of competent authorities says, "the Commissioner of Inland Revenue or their authorised representatives". So, the only way that the provisions in Section 4B(1)(6) can be made so that the Commissioner does not have to refuse to provide the information is where other people are saying, "I am not giving it to the Commissioner of Income Tax in Gibraltar because he is the competent authority, I am giving it to the authorised representative of the Commissioner of Inland Revenue so, strictly speaking, I am giving it to the Inland Revenue but there has been an exchange of letters and the Inland Revenue has informed me that instead of sending it to them I send it to their authorised representative who will keep it for his own views and not transmit it to his principal". That mechanical exercise of trying to reconcile the conflict that there is seems to me to be what is being put in place here. Why should we take other people off the hook? I do not understand this. In fact it seems to me that it would be, from our point of view, the best possible scenario if we had a situation where the United Kingdom went back, as we asked them repeatedly to do, to say there has been an oversight in this and if this has to be applied in Gibraltar it has got to be explicit and the Spaniards then opposed it. Then all their moaning about the fact that people are hiding their money in Gibraltar because there are secrecy laws here and impenetrable companies and they cannot get information on people who are avoiding taxes in Spain by using Gibraltar would be exposed because if they really wanted to do it then they would have to be made to bite the bullet and accept that we are there. I believe that what we are likely to find is that without having had the recognition to which we have been entitled for 20 years we will have assumed an obligation and that if people pursue the route that has been opened to them they will do it simply because it suits them and therefore Spain will say, "I am asking the information not from Gibraltar but from the authorised representative of the United Kingdom, but the United Kingdom has told me to send it straight to the authorised representative who will process my request without the UK being involved and that means that we are not recognising that Gibraltar is an independent jurisdiction but Gibraltar is a territory in the European Union in its own right". I would have thought that the UK could and I think they should have pursued the matter and then if we have to live with the necessity of providing that information and look at ways of minimising the impact as other people do, as Luxembourg does, and as other people do, then we would have been in a position to prepare ourselves for that eventuality. We do not accept that there is only one way to do it and that therefore if

we do not do it the way the Government thinks it can be done it must mean that we are in favour of the tax affairs and the accounts of people from other Member States being made available to other Member States so that they cease to do business here and they go elsewhere. We do not accept that one thing follows from the other. It may suit the Government to argue that but we do not accept that that is true or inevitable or logical.

Looking at the Bill before us, therefore, we think that an opportunity has been given up to gain one more element in the battle that we are facing constantly of recognition which as this Directive clearly shows is the result of the failure of the United Kingdom Government at the time when it had no problems with Spain, between 1977 and 1986, to put this right and it is not the only piece of legislation. We have similar provisions in company legislation where we keep on bringing in Directives applying them to companies in Gibraltar and in some of the Directives where there are lists similar to this it defines what a company is in each Member State and it says in the United Kingdom it is an organisation incorporated under the 1985 Companies Act and there is no reference to the Ordinances that we passed in this House as Community law. We are in a situation where almost all the business of the House is now Community law. Of the six Bills that we have in this House today, five are concerned with transposition of Directives and yet when it suits others, the territory is not part of the European Union. I think it is time that we said "enough is enough".

HON CHIEF MINISTER:

Mr Speaker, I can only tell this House that I am astonished at what I have just heard from the hon Leader of the Opposition. I honestly believe that his desire to be seen to be macho, his desire to be seen to be politically virile and his desire simply to see crisis in the relationship between Gibraltar and the United Kingdom is such that either he is suffering from great amnesia or he is redefining the boundaries of hypocrisy and duplicity to the extent that he is misleading this House when he says the things that he has said today. Mr Speaker, anybody would think from hearing the Leader of the Opposition that this way of transposing this Directive and the proposals for dealing with the United Kingdom is something that has been born after the 16th May last year. The hon Member has said that they do not support this and therefore does not feel the need to support the previous one because the solution for this is that the United Kingdom should have included us, they should go back to the Commission and get them to include

us in the Directive and that he is damned if he is going to agree to anything that facilitates or accommodates that position. Mr Speaker, I am astonished, although no longer surprised, let me say, at the attitude adopted by the Leader of the Opposition in relation to this matter. Mr Speaker, on the 29th June 1993, at a time when the hon Member was just celebrating, or shortly after he had just finished celebrating his 73 per cent majority at the 1992 Election, the then Law Draftsman wrote to the Deputy Governor stating the following:

"However, I understand that the United Kingdom is proposing to notify the Commission that the Commissioner of Income Tax in Gibraltar is the competent authority under the Directive for the seeking and providing of information and that competent authorities in other Member States should make application directly to the Commissioner of Income Tax who himself is entitled to rely on the Directive for the purposes of obtaining information from the competent authorities of other Member States. I assume that the Commission will then notify other competent authorities of this. It would be helpful if I could have confirmation that this is the action that the UK proposes to take and have copies of correspondence between the United Kingdom and the Commission.

At the meeting of the 23rd June the Chief Minister said that on the basis of the action outlined above by the United Kingdom he would be prepared to see the Directive brought into effect in Gibraltar and that in particular in respect of the outstanding request by the Spanish authorities in respect of Intercargill Limited and Cavelran Holdings Limited, Spain should be advised that if they were to seek the information from the Commissioner of Income Tax their enquiries would be dealt with in accordance with the terms of Directive 77/799. I must, however, make it clear that we still have reservations about the effectiveness of the proposed course of action and cannot accept that this is an approach which can be adopted as a precedent. I am writing separately to Michael Tatham about a form of words with respect of competent authorities which I think would be far more likely to be successful and capable of operation. Whilst Gibraltar is prepared to cooperate in the course of action proposed by the United Kingdom and to operate the Directive subject, of course, to confirmation by the Commission that the Commissioner of Income Tax in Gibraltar is accepted as a competent authority under the terms of the Directive, we are concerned about the lack of reference to Gibraltar on the face of the document, particularly as the same problem occurs in the parent subsidiary Directive."

All that this Bill does is transpose into the laws of Gibraltar, in exactly the same way as the hon Opposition Member had agreed to do, the requirements of the Directive, except that we went further that he found it necessary to go and we have sought written assurances and obtained in completely clear and unambiguous terms from the Foreign Office at a political level that they would inform the Commission, that they would inform other Member States that they had to deal directly with Gibraltar, that this was not a precedent that could be used again if Gibraltar was excluded from an Annex the way that happened in 1977 and separately we have obtained a letter, clear, lengthy and unambiguous letter from the Commissioners of Inland Revenue that protects Gibraltar's constitutional position by making it clear that they have no right or role in relation to income tax matters in Gibraltar, that this is just a way of getting out of this difficult situation, but that it is not a precedent and they have no business in connection with the tax affairs of Gibraltar. For the hon Member to give the speech that he has just given in these circumstances when all that the Government have done is put into place what he had agreed to put into place but simply gone further than he had thought it necessary to go and obtain all the assurances necessary to make sure that we were not allowing the dam to be breached in respect of other matters, is frankly an act of monstrous hypocrisy, as is, Mr Speaker.....

HON J J BOSSANO:

Is there anything in the Standing Orders that requires people to moderate their language in this House any longer or is that removed now?

MR SPEAKER:

That has never been removed and "monstrous" can mean either.....

HON J J BOSSANO:

Hypocrisy can only mean one thing, monstrous is the adjective and I think he is more of a hypocrite than I am, it is a matter of judgement.

HON CHIEF MINISTER:

Well, Mr Speaker, if I should ever give the hon Opposition Member the same amount of cause as he gives me to think that I am a hypocrite I will gladly confess to the crime but so far he is on a league of his own in these matters. Mr Speaker, the hon Opposition Member goes on and on about the principle of not transposing

Directives which exclude Gibraltar from the list because to do so is to give up the battle on recognition. Mr Speaker, the Government have not given up on any battle of recognition. The Government have made sure that in complying with Gibraltar's legal obligations, in the circumstances which have arisen, we gave no ground on the recognition of our EU status but, of course, I do not know what compelling reason the hon Member had for transposing the parent subsidiary Directive which equally did not make provision for Gibraltar in the Annex. There were no infraction proceedings there, so I do not see, that he is well placed to now lecture the Government about how it should not transpose Directives in which Gibraltar has been, and we agree, wrongly excluded from Annexes when he has done it numerous times in circumstances of much less legalistic difficulty for Gibraltar than the one that we now face given that we have waited until the very last minute to do this in the light of infraction proceedings. The advantages to Gibraltar of the parent subsidiary Directive were not so great that they justified abandoning this massive principle to which he now subscribes of not letting the UK off the hook. In other words, that we should do constitutional battle with the UK on every Directive in which they have not conducted their affairs in relation to Gibraltar as he and I would have liked, and would like them to do so. Mr Speaker, that has not been his practice and it is not our practice and he is not well placed to lecture now the Government to adopt principles which he himself was not willing to adopt nor is he well placed to lecture the Government and to oppose the Government in this particular piece of legislation in circumstances that he was going to agree to, that he had agreed to and that he was going to apply. I therefore, Mr Speaker, reject the arguments put forward by the Leader of the Opposition in relation to this matter and of course the Government will carry the Bill by its own majority.

Question put. The House voted.

For the Ayes: The Hon K Azzopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon P C Montegriffo
The Hon J J Netto
The Hon R R Rhoda
The Hon E G Montado

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 CHIEF MINISTER:

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

Question put. Agreed to.

THE FACTORIES ORDINANCE (AMENDMENT) ORDINANCE, 1997

HON J J NETTO:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar Council Directive 87/217/EEC on the prevention and reduction of environmental pollution by asbestos be read a first time.

Question put. Agreed to.

SECOND READING

HON J J NETTO:

I have the honour to move that the Bill be now read a second time. May I, first of all, draw attention to and apologise for the mistaken references in the Explanatory Memorandum to the Public Health Ordinance. It is in fact the Factories Ordinance which is being amended to achieve the purpose of the Bill, namely to transpose into Gibraltar law Directive 87/217/EEC on the prevention and reduction of environmental pollution by asbestos. The implementation is being affected by introducing new sections 105 to 112 and a new Schedule 1B. Basically, the aims of the Directive are achieved by imposing limits on discharges into the natural environment. The Bill defines the industrial processes which involve the use of asbestos and it makes it necessary for a ministerial authorisation to be obtained for carrying out such processes. As a result the Minister will also have a duty to ensure that discharges of effluents containing asbestos are adequately monitored and that measurements of emissions into the air are taken at regular intervals. The Bill also creates offences for beaches of its provisions and sets the appropriate level of fines. Mr Speaker, I have already given notice of some minor

amendments which I shall be introducing in Committee and which are linked to the mistakes connected with the Public Health Ordinance. I commend the Bill to the House.

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

HON J L BALDACHINO:

Mr Speaker, as the title of the Bill says we are just transposing Directive 87/217/EEC and therefore I understand that under the Directive what we are doing actually in some points is that the controlling authority is now the Minister and, I am not saying this as a major criticism, and in some cases it becomes the Member State. I would like the hon Member the Minister for Employment and Training to clarify certain points. Under 106(4) of the Bill, does it mean that he could have the powers to authorise anything less than what is stated in the Bill? Because under the Directive there is only one way which the Directive permits changes and that is to be more stringent rather than be of a lesser nature. Can the hon Member clarify that under Section 106(4) he would have the powers to dilute whatever provision or whatever authorisation is required? Maybe he can clarify that under 106 why is it that as the Directive reads only part has been put there and the other part has been put under 107(1), is there any legal interpretation why it should be separate rather than what the Directive has? If there is nothing, it is just that it is a question for interpretation, I can quite understand that. I just want confirmation to see if there was any reason for doing that. The other thing is, Mr Speaker, are the Government in a position so that the hon Member can discharge his duties according to the Bill having introduced the measures that are required? Is the Government prepared or if there is any requirement for any equipment that is required to carry this out? The other thing is, how many of our industries are we talking about? How many companies, how many industries are there that require..... are there any? Or are there none? The other thing is Mr Speaker, on the transportation side, if the discharge is less than 500 kilos Mr Speaker..... In any case Mr Speaker can the hon Member clarify the points I have just made out which are relevant. We are actually transposing into our laws word for word which is in the Directive anyway but I would like clarification on the points I have raised.

HON J C PEREZ:

Mr Speaker, I think it would be good for the hon Member if he could, to confirm, which is a view held by the

Opposition, that as far as the production of asbestos products that these do not apply to any function presently available in Gibraltar and that we are really talking about the use of asbestos by some industries and as my hon Colleague said could we identify which of those industries use asbestos and could the hon Member confirm, because it is not clear in the Ordinance, whether the sampling and the monitoring of the air is related only to the manufacturing or to the use of asbestos as well, that is to say, is the monitoring of the air sampling about the manufacture of asbestos products only that does not exist or is that supposed to refer to making use and working with asbestos, in say, shiprepairing industry? Could the hon Member clarify that, please?

HON J J NETTO:

Mr Speaker, in dealing with the hon Member, Mr Baldachino, in relation to his first question, Section 106(4) it does give the discretion to the Minister in relation to the powers that he has whether to dilute somehow in the circumstances prevailing on application. In relation to his second question, Section 106(3), in relation to the placing of different articles within the Bill, basically, what has been followed is the draftsman's logic in relation to the Bill. The third question relates to the equipment to verify and monitoring the question of asbestos discharges. This equipment, I am informed, is readily available by the Factory Inspectors so they are available. In dealing with the other hon Member Mr Perez, we are not talking about production of asbestos, although it is part of the particular legislation that in the eventuality in the future of having particular plans then the law would already be in existence but at the moment we are not talking about production and manufacturing of any of the asbestos material so we are only talking about the demolition of buildings, structures etc. Perhaps in relation to some of the questions by the hon Opposition Members is that one has to take this Bill which overlaps somehow with the ones which have already been transposed which is the Control of Asbestos At Work Regulations which is far more detailed in as much as to plants of work, works with asbestos, information, instruction and training, prevention and reduction to disposal of asbestos, all these particular details which have already been transposed so that a reading of that should obviously answer most of those particular questions.

Question put. Agreed to.

The Bill was read a second time.

HON J J NETTO:

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

Question put. Agreed to.

The House recessed at 12.45 pm.

The House resumed at 3.00 pm.

THE PETROLEUM ORDINANCE (AMENDMENT) ORDINANCE, 1997

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to amend the Petroleum Ordinance in order to transpose into the law of Gibraltar Council Directive 68/414/EEC as amended by Council Directive 72/425/EEC on the maintenance of stocks of crude oil and petroleum products, Council Directive 75/339/EEC obliging Member States to maintain minimum stocks of fossil fuel at thermal power stations and Council Directive 94/63/EC on the control of volatile organic compound emissions, and to amend the Petroleum Ordinance in order to provide for power to create a licensing and regulatory regime for the importation, trade in or keeping of petroleum, for petroleum related activities and for matters connected thereto 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, the Bill has a dual purpose. In the first place it amends the Petroleum Ordinance in order to transpose into Gibraltar law various EU Directives. These Directives, are Council Directive 68/414 as amended by Council Directive 72/425 on the maintenance of stock of crude oil and petroleum products; secondly; Council Directive 75/339 obliging Member States to maintain minimum stocks of fossil fuel at thermal power stations and, lastly Council Directive 94/63 on the control of volatile organic compound emissions. The second purpose of the Bill is to provide for the creation of a licensing and regulatory regime for the importation, trade in and keeping of petroleum and for petroleum related activities in Gibraltar. Mr Speaker, it is the new section 12 of the Bill that contains the core of the transposing legislation. It has two elements: firstly, it empowers the Minister to lay down, by notice in the

Gazette what the total stock of white oils should be in Gibraltar and, secondly, it also empowers the Minister by reference to the percentage market share held during the previous year by each petroleum importer to impose an obligation on each of them to maintain that percentage of Gibraltar's strategic stocks. It must be stressed that a reasonable process of consultation between the Minister and the petroleum companies will be an essential feature of this regime. New section 13 transposes the Directive which empowers the Government to require that power stations with a capacity of over one hundred megawatts or more should maintain strategic stocks of fuel. Mr Speaker, as Members may be aware there is in fact no such generating station in Gibraltar, the combined capacity of all the generating stations in Gibraltar is in fact well below a hundred megawatts in any event. I should also mention that section 2(6) of the Bill amends section 7 of the Petroleum Ordinance by introducing a new paragraph (L). Its main aim is to allow the Government to harmonise the trade licensing arrangements governing the petroleum industry with the provisions of the Trade Licensing Ordinance. It should be stressed that both will be distinct and independent so that the industry will not fall under the Trade Licensing Ordinance. These Rules are instead lifted and incorporated into the Petroleum Ordinance, the Regulations are currently being drafted and will be gazetted later this summer. There has been an element of confusion in the past as to the precise applicability of the Trade Licensing Ordinance when it comes to petroleum related products and the new regulations should harmonise the requirements and leave clear that it is under the Petroleum Ordinance that the necessary licensing is effected. Finally, section 7A empowers the Chief Justice to make rules of court with respect to appeals from decisions arrived at by the Licensing Authority. Mr Speaker, I will be moving a few minor amendments at the Committee Stage, details of which hon Members should have received already. 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 supporting this Bill. The provisions that the Minister has just mentioned in relation to generating capacity of less than a hundred megawatts is something that I would like to bring to his attention in that what the Directive says is, that it does not apply to power stations fired by industrial gases, industrial waste and other fuel requirements derived from waste nor to private industrial generators with a total capacity of less than one hundred megawatts." It seems to me that

when they are talking about private industrial generators in the context of the UK or other Member States, what they are probably talking about are producers of electricity with specific customers, not people that are linked up to the grid and certainly not the publicly-owned generating station which cannot be a private industrial generator. For example, in the UK and in Spain where the whole of the public supply is private, it seems that private industrial generator, the fact that it is qualified, must mean something so it may well be that simply saying every generating station of a hundred megawatts is exempted may not be meeting what the actual Directive says. As regards the stocks that need to be kept for generating stations, in other cases it is to enable the continuation of electricity supplies for a period of at least 30 days. In fact, the provisions in the Ordinance do not specify that it is for generating capacity to be maintained for 30 days. It seems to leave it at the absolute discretion of the licensing authority, or the Minister as the case may be, to actually decide what the stocks should be. In terms of other petroleum products, I would have thought that one problem must be that in requiring stocks to be kept, there is the problem of space in Gibraltar. I recall that when we were looking at this there was this difficulty of how could we have a common stockholding capacity in which everybody was able to participate and people did not feel that they were vulnerable because they would be facing the supply from stock by somebody who at the same time was supplying their own retail outlet and in competition with them. I am bringing that to the notice of the Minister because that was something we had great difficulty in coming up with an answer which kept everybody happy. It is difficult to envisage a situation where each supplier of fuel would be licensed as an importer and then each one would have to have independent or their own supply line stocks without requiring space and investment in infrastructure which could make it a very expensive business for anybody to maintain competitive prices particularly on the bunkering side where the margins are so narrow and the competition is therefore likely to be that small additional cost can suddenly drive a lot of customers away. I imagine also that in looking at previous supplies, given that for example last year there was such a substantial increase in bunkering it is not something that can be predicated necessarily to always move in the same direction so presumably there would have to be an averaging over a period of time to ensure we are not requiring people to keep stocks which turn out to be well above what makes sense in the context of what is the average demand for the fuel from one source or another. Apart from those points which we are making to be helpful, we agree with the principles of the Bill.

HON A ISOLA:

Mr Speaker, may I just make a couple of very brief points. Obviously when the rules are published it will give a better indication or give a clearer picture, is it the intention to have a licensing authority, by way of clarification, or is it in fact the Minister who will be issuing the licence? The second question would be, what will happen to those that presently have licences under the Trade Licensing Ordinance at the time when the new provisions are brought in? Thirdly, will the rules and regulations produce the criteria which the Licensing Authority require to be satisfied on in a similar way to what the Trade Licensing Ordinance contains to a degree in respect of these petroleum licences?

HON P C MONTEGRIFFO:

Mr Speaker, I am grateful for the hon Members' comments. Dealing firstly with the Leader of the Opposition's remarks, I think he is probably right with regard to the position in respect of power stations. The strict wording of the Directive does indeed make mention of private, the operation of private power stations in the context of the hundred megawatt criterion so he may well be right in that, we will see in practice when the regulations are actually published whether one can exempt the MOD and Government power stations completely or whether we will actually have to grant a licence. Mr Speaker the actual details of the days that stocks should be required for would be contained in the regulations. All that we have been keen to do today is to get this enabling piece of legislation in place. As I will mention in a moment, there is actually a fairly urgent need to progress with the commercial and strategic aspects of the wider petroleum issue and therefore we are keen to get this into place today and the details will be in the regulations which we hope will not be very much delayed. There will have to be a need to make specific mention of the type of days stock requirements that will be necessary to comply with the Directive, which of course changes. The original Directive in respect of maintenance of stocks, the general Directive on maintenance of stocks, in fact required a 65 days internal consumption threshold that was subsequently lifted to 90 days really as a result of the difficulties in the early 1970's with the supply of petroleum products. The hon Leader of the Opposition makes mention of the difficulties of space and how this issue is going to be dealt with. We think that the rules will be able to be crafted in a way that will allow Gibraltar's existing capacity to match the requirements on stock which will meet the Directive. The position is particularly difficult because it is not just any storage

that we are talking about. We are not talking about King's Lines, for example, or the East Side tanks, we are probably only talking about William's Way because it is white oils, the Directive talks about white oils, that have this storage capacity requirement and it is only that facility that is designed for white oils. The hon Member makes mention of bunkers. Bunkers are excluded from the Directive. The Directive does not cover bunkers and therefore nothing in the regulations will be designed to deal with the minimum requirements for bunkering. The whole rationale of the Directive is to protect strategic stocks for white oils that are primarily motor vehicle, aviation fuel and certain types of gas oils for generating stations.

Dealing with the hon Mr Isola's comments, we have not concluded at this stage, Mr Speaker, the details of how the licensing will be undertaken and I would not want to anticipate this. The rules will set out detailed provisions how applications are to be made, to whom and the whole methodology. I would rather leave that matter rather vague until final decisions are taken there. I think that the Opposition Members will understand that the Bill today is more than just about the transposition of the Directives. It is also about seeking to introduce a regime which will give Gibraltar the ability to maintain strategic stocks by ensuring that importers have to work within an environment that requires stock maintenance and ensures the viability of that facility. That requires investment and requires legislation to ensure the viability of that investment. Thank you, Mr Speaker.

Question put. Agreed to.

The Bill was read a second time.

HON P C MONTEGRIFFO:

Mr Speaker, I beg to give notice that the Committee Stage and third reading of the Bill be taken later 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 Estate Duties (Repeal and Consequential Provisions) Bill, 1997

2. The Medical and Health Bill, 1997

3. The Income Tax (Amendment) Bill, 1997

4. The Income Tax (Amendment)(No 2) Bill, 1997

5. The Factories Ordinance (Amendment) Bill, 1997

6. The Petroleum Ordinance (Amendment) Bill, 1997

THE ESTATE DUTIES (REPEAL AND CONSEQUENTIAL PROVISIONS) BILL, 1997

Clauses 1 to 5 were agreed to and stood part of the Bill.

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

THE MEDICAL AND HEALTH BILL, 1997

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

Clause 2

HON K AZOPARDI:

Mr Chairman, I gave notice that I would be moving certain amendments at this stage of the Bill. I think they have been circulated to hon Members. In section (2) I would like to move two amendments. In the definition "Certificate of Registration" on page 150 the deletion of "18(2)" and the substitution of that by "37(2)". The reason is that that evidence section used to be (18) in the 1973 Ordinance and by a slip the number has not been changed. The second amendment to that particular section is in the definition of "IELTS test", on page 153, the addition of the word "al" after "internation" and "English" before "language" so it would read "international English language".

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

Clauses 3 to 8 were agreed to and stood part of the Bill.

Clause 9

HON MISS M I MONTEGRIFFO:

Mr Chairman, I would like to make two points. I do not know whether it is the appropriate time now but I would like to remind the House that the Opposition will be voting against the words, "in the Authority" where it refers to being in employment by the Authority. Every

time that the words come up "is in employment by the Authority."

MR CHAIRMAN:

That is very difficult, unless when it arises you suggest an amendment. Otherwise how can we do it.

HON MISS M I MONTEGRIFFO:

Wherever it appears, we are voting against, Mr Chairman.

HON CHIEF MINISTER:

Mr Chairman we used to find ourselves in similar predicaments when we were in Opposition and we used to resolve this by making it clear that we had this opposition but that we were not going to take it every time it arose. I think if the hon Lady simply records the fact that she disapproves of that it is actually not necessary, as far as we are concerned, for her to actually so say every time it appears. We understand that she objects to it throughout the Bill.

HON MISS M I MONTEGRIFFO:

Also, Mr Chairman, I believe we are under Clause 9.

MR CHAIRMAN:

The Minister is going to make an amendment and then you can make another amendment to Clause 9.

HON K AZOPARDI:

Mr Chairman, I have several amendments here. In Section 9(4), page 159, under (e) the insertion of "a national of an EEA State and is" after the words "he is". It would read "he is a national of an EEA State and is a person who has undertaken such....."

The reason for that is that those particular articles mention 37(2) and 39(2) also relate to nationals of an EEA state as does the particular provision in 9(4)(d) but those words were left out in the drafting. Shall I do all the amendments or shall we vote as we go along?

MR CHAIRMAN:

Do all on 9 and then we vote on that.

HON K AZOPARDI:

In 9(5), on page 160, the deletion of "(4)" in the subsection in the second line and the insertion thereof of "(1)(b)". (1)(b) is the registering-creating section rather than (4). (4) is the explanation to (1)(b). In 9(6)(a) after the words "Medical and Health Ordinance" the insertion of "1973" to make it clear which Ordinance we are talking about and in 9(7)(b) the deletion of the reference to "15(1)(i)" and the substitution therefor of "15(1)(f)(i)". That will be tied in with a subsequent amendment I will be making to make it clear, make section 15 read clearer than it is at the moment.

HON MISS M I MONTEGRIFFO:

Mr Chairman, we do not have an amendment, but as I said in my contribution we believe that as the old law stood dentists, pharmacists and doctors had the same criteria for registration and the Minister agreed that there is a difference now in the new law. I know that he has also said, Mr Chairman, that in the case of the doctors, where it says, "and has such professional experience as the Board considers appropriate" the Minister has said that he is satisfied that the Board will be taking advice as regards the GMC standards. However, if that is the case and he does mean that, therefore we see no reason why he should not be treating dentists and pharmacists the same as doctors and therefore we would urge the Government to reconsider that sub-section 6(c) in page 160 and regularise the position as with the dentists and pharmacists.

HON K AZOPARDI:

My only comment there is that yes I do accept that there is a difference in this law but in practice there is not envisaged to be a difference when the Board operates the amendment but the problem in accepting what the hon Members says is that 8(1)(b) makes reference to being in possession of a Commonwealth or foreign diploma or such professional experience as would entitle him to be so registered in the register described in 1(a) which are the registers existing under any law for the time being in force in the United Kingdom. If the law is changed in the United Kingdom we do not have to change the Gibraltar Ordinance because we are making a specific reference to a particular provision of the Medical Act in 6(b), in other words section 19 of that and because it is not the same as 8(1)(a) and 8(1)(b), if the UK changed section 19 of the Medical Act then we would have to come and change this Ordinance if they changed the provision under which people which register if they were Commonwealth citizens in the UK. (c) is meant to be the saving overlap to

maintain the position that the Board could take the same qualifications that would entitle the person to be registered under a different section in the United Kingdom without changing the law in Gibraltar. That is the only difficulty I see in accepting the hon Member's point and therefore I would seek to keep it as it has been drafted. The previous drafting in the 1973 Ordinance referred to existing lists under the law of the United Kingdom as the case may be through the passage of time. It does not do so in relation to medical practitioners and I would like to avoid having to come back to the House if necessary but the hon Member certainly does have my assurance that the Board, when discussing the matter with me sees that in practice it will continue to operate as it has done in close discussions with the GMC and it will seek the advice of the GMC as to appropriateness of qualifications and will continue to apply the registration system in that way.

HON J J BOSSANO:

Mr Chairman, obviously the assurance that has been given by the Minister would meet the point that I myself are not clear why it is that the wording in the case of dentists and pharmacists which say, "in possession of a Commonwealth or foreign diploma which would entitle him to be so registered in the UK." I still do not see that why say that what we accept here is what would be acceptable in the UK which is what the present law does and what is going to continue to be possible for dentists and pharmacists because if we look at the way the provisions are written now it says in 9(c), "medical practitioner with an overseas qualification as prescribed in sub-section (6), but not being a qualification referred to in paragraph (a) or (b)". In sub-section (6) what is prescribed is that either the person should already be registered here under 7(1) or the person should be entitled to be registered in 83 but (c) cannot be said to be prescribing anything since what it does is in fact to convert the concept of somebody being prescribed to something which is considered appropriate.

HON K AZOPARDI:

Mr Chairman, yes I do take that point but I stress that the original draft, when I did receive it, in (b) read "registered under section 19 of the Medical Act" and (c) read as it does now and so there would be a difference in that one would require registration in the UK for registration in Gibraltar and the other one would require, if you like, possession of Commonwealth qualifications which would entitle him to be registered under section 19. There was a difference originally. The draft has moved somewhat and that is why I say there

is an overlap in practice. I have no difficulty accepting an amendment if the hon Members are suggesting it but I do have that concern that I described before, that if the legislative situation changes in the UK then we will require a change in the law in Gibraltar whereas if we keep it as it is now we will not require a change in the law because (c) by encroachment on (b) even if (b) is removed even if the section is removed in the UK and shifted to another Act, because of (c) we will still be able to continue that practice whereas if we did not have it we would have to come back to amend the law, that is my only point. I do accept what the hon Members have said in relation to the rationale of the section.

HON J J BOSSANO:

Presumably if section 19 of the Medical Act 1983 were removed in the UK and at present it says, "registered or entitled to be registered under that section" if the section and the Act were not specified and it said, "which the Board considers appropriate for registration in the UK" without saying under which Act or under which title, I do not think how that would require an amendment because that is essentially what we are doing for the dentists and the pharmacists because there we say that in accepting a foreign or a Commonwealth diploma in dentistry or pharmacy and in accepting professional experience the criteria to be applied in deciding whether to accept it or not is that if that person was going to the United Kingdom and making an application the United Kingdom would accept it. If the intention is that we should not accept here something different from what they accept in the United Kingdom then that is what is the case at present, that is what is going to continue to be the case and it seems to me that if we are just saying we will accept what they accept in the UK irrespective of what changes take place in the United Kingdom in the future it will still be what they accept in the UK.

HON K AZOPARDI:

Yes, I accept all that description of what the Board will accept is precisely what the Board will accept. That is why I have said if the hon Member wants to suggest an amendment that will cure the issue that he sees it would require I think a description of entitlement to registration under section 19 of the Medical Act or any other law in force in the United Kingdom at such future time. I think that would cure something like that, if the hon Member wants to suggest that.

HON J J BOSSANO:

I do not see why we need to say anything about any changes because the way it is drafted in the case of dentists and pharmacists seems to me to be sufficient without referring to what the law is at present in the UK or to what the law may be in the future. For example, if that clause read, "as the Board considers appropriate and which would entitle the person to be so registered in the UK", then the Board in looking at whether it is appropriate or not cannot disregard whether it would be enough to entitle the person to be registered in the UK. If we do not have any reference to the UK it seems to me that irrespective of how in practice the Board may choose to act or not act, theoretically we are saying in our law that we can at a point in the future decide that somebody from the Commonwealth, with a Commonwealth diploma rather, it does not have to be Commonwealth nationality, with a Commonwealth diploma or a foreign diploma may be considered inappropriate because there is in fact no standard prescribed even though in (9) we are essentially being told, "if you want to know what the standard is, go to (6)" and if we go to (6) it says, the standard is whatever might be considered appropriate". So I would suggest an amendment which we can move adding the same words as in the case of the dentists, that is, in addition to it being appropriate it should be a qualification and an experience which would entitle the person in the UK. That would change the position we have got and I cannot see why if section 19 of the Medical Act of 1983 were to be altered any amendment would be needed because the Board would then look at the qualification, look at what is happening in the UK and if the UK would renew proposals or the new law accepts such individuals the Board here obviously can go ahead and we can keep that the Board still has in fact the autonomy of deciding whether it is appropriate notwithstanding the fact that they have got the UK. So instead of substituting "appropriate" we can keep both things, the eligibility to be registered in the UK and the judgement of the Board.

HON CHIEF MINISTER:

Mr Chairman, I would just like to be clear that I understand what the hon Member is suggesting. Is he suggesting that we should use a formula of words which is not UK specific? That we should merge the treatment given to UK-qualified medical practitioners into the same language as other Commonwealth or foreign or EEA state? Is he in effect suggesting a merger between (b) and (c)?

HON J J BOSSANO:

What I am saying is, if we look at section 8(1)(b) in the case of dentists and pharmacists the person that applies must satisfy the Board that he is in possession of such Commonwealth or foreign diploma and this is for people who do not have the EEA qualifications or who are registered in the UK, the third category. Those dentists and those pharmacists would be permitted to be entered into the Register provided that the diploma that they have and the professional experience that they have would be ones that would enable them to be accepted in the Register of the United Kingdom. At the moment what is being repealed says that for all three professions, for dentists, pharmacists and medical practitioners. Logically, when we look at the change that is being made we see that the same requirement of the standard being a standard that is acceptable in the UK is being retained for dentists and pharmacists. When we then look at what is prescribed in 9(1)(c) which then refers us to sub-section (6) the need to have experience and the qualifications that would be acceptable in the UK register is no longer there and instead we have the judgement of the Board as to what it considers appropriate. Simply looking at the letter of the law, it led us to the conclusion that whereas dentists and pharmacists who have not got EEA qualifications and who are not in the UK but who arrive here with a qualification from a foreign non-EEA state or from a Commonwealth state, those categories, the dentists and pharmacists can apply and whether they are accepted or not depends on what would be the answer they would get in the UK. In the case of the doctor the law appears to say the Board may decide to have a higher standard or a lower standard in each individual case because there is nothing to stop them doing it. It is what they consider appropriate. That seems to run counter to the whole drift of the policy that we heard in the general principles of the Bill of raising standards. We cannot see why 6(b) in any way requires 6(c) and we cannot see why in 6(c) we should not be able to keep the provision that we have kept for dentists and pharmacists which is to say in looking at the Commonwealth authority diploma in medicine and at the professional experience when the Board has to decide if it is appropriate they need to establish that it would be considered appropriate in the UK for registration in the UK. It seems that we simply produce in addition to the words that are already there what is in 8(1)(b) which says, "as would entitle him to be so registered in the UK", that then does it because in fact what we are doing is retaining what is already there. At the moment the clause on registration for dentists, pharmacists and medical practitioners is just one clause and what we are introducing for dentists and

pharmacists is identical to what there is at present in the existing Ordinance.

HON CHIEF MINISTER:

Mr Chairman, is the hon Leader of the Opposition proposing a specific amendment? Is he working on it? I think the point, if I now understand him correctly, the main thing that he is saying is that 9(6)(c) read in conjunction with 9(1)(c) gives more latitude, in other words, there are people who would be employable if they are doctors but not dentists. That there is a discretion to employ doctors that fall into 6(c) and there is no similar category in respect of dentists and pharmacists, and therefore that there is latitude to employ people as doctors who would not be qualified to be employed as dentists or pharmacists in terms of the source of their qualifications. Provided that my hon Colleague the Minister for Health can confirm that this is not a requirement of the Directive, this is something that has been put in domestically in the Bill then of course we have no objection to considering the proposed amendment when we have seen it.

HON J J BOSSANO:

I think in fact, Mr Chairman, the point is met if we actually insert in 6(c) in the penultimate line in between the word "experience" and the word "as" the wording that exists in the case of dentists and pharmacists. It would then read, "such professional experience" as the other one does, "as would entitle him to be registered in the UK and as the Board considers appropriate." I am not removing the discretion of the Board which is not there for the dentists, I am just saying that as well as having the discretion there should be the parameter in the law that we are still looking at people on the basis that if they come up with a piece of paper which in fact would not even be looked at in the UK, the Board cannot take them into account.

HON CHIEF MINISTER:

Yes, Mr Chairman, I think we can accept that amendment.

HON J J BOSSANO:

Mr Chairman, I beg to move that section 9(6)(c) be amended by inserting between the words "experience" and "as" in the penultimate line the words "as would entitle him to be so registered in the UK and". The section would then read, "such professional experience as would entitle him to be so registered in the UK and as the Board considers appropriate".

Clause 9, as amended, was agreed to and stood part of the Bill.

Clause 10

HON K AZOPARDI:

Mr Chairman three amendments here as well. In 10(1)(c) the deletion of "the Government" and insertion of "a Government or Authority" and in 10(8)(a) the insertion of "the" before "Government hospital" and the insertion of "a" and the insertion of "or Authority" after "Government" so the same effect there "Government or Authority".

HON J J BOSSANO:

Mr Chairman, the point is that we have indicated that we are opposed to the policy of employment by the Authority but it does not mean that we are against the existence of the Authority so in voting against we need to be sure that we are voting against something which has in fact an employment effect and not any other effect.

HON K AZOPARDI:

Sections 10(1)(c) and 10(8)(a). The rationale here is we are talking about the Hospital rather than employment, I think that is helpful to the Opposition Members. I should add that it is relevant to a particular section of the Gibraltar Medical Health Authority Ordinance which vests the property of the Government in 1987 in the Authority, so I think it is consistent with that.

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

Clause 11

HON K AZOPARDI:

Mr Chairman, I move in section 11(2) the deletion of "responsible" in the second line and the substitution of "competent". It is in fact "competent authorities" which is the required wording and that is the rationale for that amendment.

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

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

Clause 13

HON K AZOPARDI:

Mr Chairman, in clause 13(4) the insertion of "Part 1A of", before "the" and after "in" on the second line to make it clear where we would register, in which part we would register the visiting medical practitioners.

Clause 13, as amended, was agreed to and stood part of the Bill.

Clause 14

HON K AZOPARDI:

Mr Chairman, in section 14(1)(a)(ii) in the third line the deletion of the words, "in the interests of his country of origin", which is I think on reflection a superfluous expression, even though it is taken from the GMC guidelines on that subject and in 14(2)(c)(ii) before "respect" the insertion of "in".

HON J J BOSSANO:

The provision is based on employment by the Authority which is not yet happening. Clause 14(1)(a)(i) should say employment by the Government or the Authority so that in fact it is applicable why it is still the Government and it might be applicable later if we have been able to persuade them that the employment should continue to be like that.

HON K AZOPARDI:

Can I say that it does not affect anyone employed at the moment because there is no one on the limited register. There are no junior doctors that are expected to be employed by the Authority in future, or Registrars, this is just a provision just in case we want to do that in future and it affects no one because there is no limited register. So I do not really see the need for doing that.

HON J J BOSSANO:

What I am suggesting is that if they were to be in a position to proceed and a decision had not yet been taken on whether the Authority would start employing people they would have no choice. What I am suggesting is that we have a choice by adding the words "employed by the Government or the Authority." I propose that the first line in 14(1)(a)(i) be amended by the insertion of the

words "the Government or" in between the words "by" and the word "the".

Section 14, as amended, was agreed to and stood part of the Bill.

Clause 15

HON K AZOPARDI:

Mr Chairman, in 15(1) after "(e)" after the words "and subject to" in the middle of page 168 the insertion of "(f)" in the margin and before the words contained in the paragraph numerated with (i). To make that sub-paragraph read clearer so that there is a distinction made between the paragraphs in the roman numerals and the preceding sub-paragraph. In 15(2)(i) the deletion of the words "or by repute" after "personally", that is 15(2)(f)(i).

Clause 15, as amended, was agreed to and stood part of the Bill.

HON J J BOSSANO:

Can I just ask, 2(h), we have got here that it confirms in writing that he will leave Gibraltar at the end of the period of employment in Gibraltar. Can we in fact require a person to leave Gibraltar if he is an EEA national? Even if he has completed his period of employment?

HON K AZOPARDI:

Presumably if they are an EEA national they will register under full registration. This limited register is intended for non-EEA nationals. It is not envisaged that this will be the focus for EEA nationals. Indeed in the United Kingdom, when people are registered on the limited register there is a possibility of them then acquiring such qualifications that allow them to transfer to the full register in which case of course that would not be the case but certainly it is not envisaged that this will be the register where we will register EEA nationals. This is perhaps for the SHO that may be on the limited register in Ireland as indeed there are at the moment who may wish to come to Gibraltar who is say a Pakistani national or something like that, it is not intended to be for EEA nationals that will be channelled towards full registration because they will have their full training ordinarily.

Clause 15, as amended, was agreed to and stood part of the Bill.

Clauses 16 to 21 were agreed to and stood part of the Bill.

Clause 22

HON K AZOPARDI:

Mr Chairman, in 22(b) there is a mis-spelling of "categories" there, the deletion and substitution by the correct spelling.

Clause 22, as amended, was agreed to and stood part of the Bill.

Clauses 23 to 43 were agreed to and stood part of the Bill.

Clause 44

HON K AZOPARDI:

Mr Chairman, section 44(4) does not read correctly and I would suggest the deletion of the words "or caution, censure, suspend or removal of the name of" after "order" and the insertion of the words "the removal of the name of, caution, censure or suspend".

Clause 44, as amended, was agreed to and stood part of the Bill.

Clauses 45 to 59 were agreed to and stood part of the Bill.

Clause 60

HON K AZOPARDI:

Mr Chairman, in the definition of "health prescription" which is at page 193, the insertion of the words "or dentist or as the case may be" after "medical practitioner". I am advised by the Health Authority Management that dental practitioners are also entitled to issue prescriptions. Mr Chairman in the definition of "medical purpose" the proper spelling of "anaesthesia" in (c) the deletion and the proper spelling there.

Clause 60, as amended, was agreed to and stood part of the Bill.

Clause 61

HON K AZOPARDI:

Mr Chairman, I move in 61(1) the deletion of the words "Chief Executive" and the insertion of "Public Health Director". The rationale behind this is that it is effectively the specialist in Community Medicine now who as a medical practitioner, assesses these matters and I think historically this was given as a duty to the General Manager because formerly the Director of Medical Services, who used to do that, was a medical practitioner so was capable of assessing those medical cases. This amendment is intended to reflect that it will be a medical person who will have to do that assessment.

Clause 61, as amended, was agreed to and stood part of the Bill.

Clauses 62 and 63 were agreed to and stood part of the Bill.

Clause 64

HON K AZOPARDI:

Again there, Mr Chairman, the same amendment, the deletion of the words "Chief Executive" and the insertion of "Public Health Director".

Clause 64, as amended, was agreed to and stood part of the Bill.

Clause 65 was agreed to and stood part of the Bill.

Clause 66

HON K AZOPARDI:

Clause 66(1) Mr Chairman, the insertion of "issued" after "licences" in the first line and "and Section 64" after "61" in the second line.

Clause 66, as amended, was agreed to and stood part of the Bill.

Clauses 67 to 69 were agreed to and stood part of the Bill.

Clause 70

HON J J BOSSANO:

Mr Chairman, the register that has to be kept of prescriptions, could the Minister explain what is the health prescription in (4) which does not have to be

included in the register? In Section 70 there is a requirement that a register of prescriptions should be kept by the pharmacists and then in sub-clause (4) it says "the provisions of sub-sections (2) and (3) relating to registration shall not apply to a health prescription". What is a "health prescription"?

HON K AZOPARDI:

A "health prescription" is one defined in page 193 as "a prescription issued by medical practitioners, dentists, or as the case may be, under the Medical Group Practice Scheme". That is what a health prescription is, so it does not apply to that. This is in theory a reflection of a section in 1973 Ordinance, it is not a new section.

HON J J BOSSANO:

Mr Chairman, since we are repealing the Ordinance and putting in something new, what is there from 1973 may reflect the fact that we started out without the GPMS. Is it not a good idea that they should have to keep a register of GPMS prescriptions?

HON K AZOPARDI:

No, no, Mr Chairman, the hon Leader of the Opposition has misunderstood me. The 1973 Ordinance already defines "health prescription" in the same way that we have said and so there is nothing new either in the health prescription or in this section. So I do not see how we can add something because of the Scheme when there was already a reference to the Scheme in the definition of "health description".

HON J J BOSSANO:

Fine, but since we are repealing the old Ordinance and putting in a new one, apart from the fact that it was there in 1973 and remember that it was around that time that the GPMS started and at the time that it started it certainly was not as widespread as it is today, and if they are required to maintain a register of prescriptions and if the definition of health prescription is all the prescriptions issued under the Medical Group Practice Scheme, it means that the register is just for private practitioners, either there is some logic to that.....

HON CHIEF MINISTER:

What the hon Member is saying is that as drafted, which is carried forward from a law which was first drafted when there was not a Group Practice Medical Scheme, that

what we are now creating is a register of prescriptions, in other words, chemists have to keep in numerical order every medical prescription that they make up except the one issued by the chemist in response to a health centre prescription.

HON K AZOPARDI:

Is the hon Leader of the Opposition suggesting an amendment, by the deletion of sub-section (4)? The Government will agree to that amendment.

HON J J BOSSANO:

I will therefore move, Mr Chairman, the deletion of sub-clause (4) in clause 70(1).

Clause 70, as amended, was agreed to and stood part of the Bill.

Clauses 71 to 75 were agreed to and stood part of the Bill.

Clause 76

HON K AZOPARDI:

In section 76(1)(b)(ii) there is a spelling mistake which reads "pharmaceutics" instead of "pharmaceutist".

Clause 76, as amended, was agreed to and stood part of the Bill.

Clauses 77 to 82 were agreed to and stood part of the Bill.

Clause 83

HON K AZOPARDI:

Mr Chairman, in 83 the insertion of "61 or" before "64" in the first line.

Clause 83, as amended, was agreed to and stood part of the Bill.

Clauses 84 to 91 were agreed to and stood part of the Bill.

Schedule 1

HON K AZOPARDI:

Mr Chairman, in rule 2 Schedule 1 the deletion of all the words in brackets and the brackets there in the first line"(other than the ex-officio members)".

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

Schedules 2, 3 and 4 were agreed to and stood part of the Bill.

Schedule 5

HON K AZOPARDI:

Mr Chairman, page 233 Schedule 5, the deletion of the words "An appropriate European" at the beginning of that paragraph and the insertion of "A". So it would read "A diploma granted by an EEA state". Schedule 5, as amended, was agreed to and stood part of the Bill.

Schedules 6 to 12 were agreed to and stood part of the Bill.

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

THE INCOME TAX (AMENDMENT) BILL, 1997

Clauses 1 to 18 stood part of the Bill.

Clause 19

HON CHIEF MINISTER:

Mr Chairman, I have given notice of an amendment to clause 19 which would be section 82 of the principal Ordinance. Although in the amendment the whole of the section is reproduced, the principle reason for the amendment is that it says in (2), that, "The first instalment shall be due and payable on the later of 31st March or 30 days after the issue of the assessment" and in (3) it says, "The second instalment shall be due and payable on the 30th June or 30 days after assessment." So if the assessment takes place after the 30th June, as well it might, then both instalments would fall due on the same day and the amendment simply has the effect of converting the reference to 30 days in (3) to 60. The first instalment shall be due and payable not later than the 31st March in the year of assessment or within 30 days after the issue of the assessment, whichever is the later. The second instalment would be due on the 30th June or within 60 days after the date of the issue of assessment so that there should simply be two days,

otherwise they would both be due 30 days after the assessment, that is the purpose of 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 P C Montegriffo
The Hon J J Netto
The Hon R R Rhoda
The Hon E G Montado

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

Absent from the Chamber: The Hon J J Holliday

Clause 19, as amended, stood part of the Bill.

Clauses 20 to 25

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 P C Montegriffo
The Hon J J Netto
The Hon R R Rhoda
The Hon E G Montado

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

Absent from the Chamber: The Hon J J Holliday

Clauses 20 to 25 stood part of the Bill.

Schedule 1

HON CHIEF MINISTER:

Mr Chairman, there is just one amendment that I would like to propose of which I have not given notice because I have just spotted it and that is on page 281, item 4 paragraph 2, there is a reference to the Secretary of the Government of Gibraltar and that of course should be the Chief Secretary.

I propose an amendment which is the insertion of the word "Chief" before the word "Secretary" and of course that is the person that used to be called the Administrative Secretary, he fancied a new title!

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 P C Montegriffo
The Hon J J Netto
The Hon R R Rhoda
The Hon E G Montado

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

Absent from the Chamber: The Hon J J Holliday

Schedule 1, as amended, stood part of the Bill.

The Long Title

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 P C Montegriffo
The Hon J J Netto
The Hon R R Rhoda
The Hon E G Montado

For the Noes: The Hon J L Baldachino
The Hon J J Bossano
The Hon J Gabay
The Hon A Isola

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

Absent from the Chamber: The Hon J J Holliday

The Long Title stood part of the Bill.

THE INCOME TAX (AMENDMENT) (NO 2) BILL, 1997

Clause 1

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 P C Montegriffo
The Hon J J Netto
The Hon R R Rhoda
The Hon E G Montado

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

Absent from the Chamber: The Hon J J Holliday

Clause 1 stood part of the Bill.

Clause 2

HON J J BOSSANO:

Clause 2 is where we have the provision that the Commissioner of Income Tax shall act as competent authority within the meaning of the Directive in relation to the requirements of that Directive as respects Gibraltar. Let me say in view of the fact that in his contribution on the general principles, the Chief Minister seemed to think that we were in favour of this on the 23rd January 1993 and that we have changed our minds today, for the record, say that the position that I explained today was, and I have had an opportunity to check some notes at lunchtime, put in February 1994 face to face to Government Ministers and that therefore irrespective of what there may be in correspondence and I would need to see the correspondence before and after the

23rd June to put that in context, there was no question of what our position was in seeking that the Commissioner should be the competent authority and not simply behave as if he were on the basis that the proviso in the UK legislation which allows the United Kingdom Commissioner of Inland Revenue to have a representative. We did not think that that route was adequate and that position was a very clear one and it continues to be our view today and therefore that is the principal reason why we are not willing to support the implementation of the Directive as stated here because we think the arguments that have been put in the past appear to have been lost over rather than put right.

MR CHAIRMAN:

At this stage you are not suggesting any amendment?

HON J J BOSSANO:

We are voting against and I am pointing out that in this particular clause we have the Commissioner of Income Tax shall act as a competent authority by definition if acting as we understand it because in fact he is not going to be recognised as the competent authority.

MR CHAIRMAN:

It is purely mechanical, you voted in favour on the general principles.

HON J J BOSSANO:

No, we voted against.

MR CHAIRMAN:

You have got no amendments, in any case?

HON CHIEF MINISTER:

Mr Chairman, the Commissioner of Income Tax, and this is the basis of the agreement between the Gibraltar and the UK Governments recorded in correspondence and we have received assurances that the position of the Commissioner of Income Tax is in every respect as if he had been separately listed in the Directive. What we have not insisted on because it cannot be delivered apparently is..... and frankly what the records show the hon Members were at least in that part of the correspondence that I have seen, minded to accept, is what we have done which is to put the Commissioner in every respect in the position that he would have been in the sense of exercising his powers and functions as if he had been

listed although he has not been listed. Of course, it goes without saying that it is a device, the Commissioner is not listed in the Directive, he is not listed in the Annex and it would be foolish to pretend that he is but that is not unique to this case. There are many cases in which the Gibraltar competent authority has not been made provision for in the Regulations and as far as the Government are concerned this now becomes a distinction without a difference except when you are discussing the question, should the UK have forgotten back in 1977 to include us? Mr Chairman, we take the view that the hon Opposition Member appears to have taken in June 1993, of course I cannot speak to whatever changes of mind he may have had after June of 1993, but the position that we have taken is the one that correspondence shows he had in June 1993 and was that this was simply not worth the fight because apparently it could not be remedied. The hon Member must reserve his own view as to whether he thinks that it could be remedied or not, the fact of the matter is that the United Kingdom has not, since 1977, been willing to go back to the Commission and invite them to circulate all Member States with the request that the Directive be amended. Let me say, Mr Chairman, that the Directive does not just say, "the Commissioners of the Inland Revenue", the Directive as drafted actually gives the UK the ability to have more than one competent authority for Member State-UK. That is in effect what we have used but the UK are not willing to go back and have this Directive amended and you start from that premise, the question is whether you have a massive battle in infraction proceedings or whether you just proceed on the basis of saving as much as possible of the Gibraltar position which, as I say, the file clearly shows is the approach which recommended itself to the Opposition Member at least in June 1993, if not subsequently, as to the subsequently I cannot speak.

HON J J BOSSANO:

Can I just ask, in 4(b) the reference to "capital" in the disclosure of information, given the fact that we do not have any taxes of capital in Gibraltar why is it that there is a provision there in giving information on capital to the competent authorities of other Member States?

HON CHIEF MINISTER:

Mr Chairman, for the simple reason that the philosophy and the whole objective of the Directive is not that you only provide assistance when there is a corresponding fiscal measure. This is not reciprocity of measure. The Directive does not say that you will only provide assistance at the request of a foreign Government if you

have the same form of taxation in your country. What the Directive says is in respect of any tax matter which arises under the laws of a Member State the receiving country, the host country of the request, has to make available the investigating powers that they have in respect of their domestic legislation because, of course, Mr Chairman the Commissioner of Income Tax may well have information in his hands in relation to income but which may nevertheless be useful to some other country in relation to capital taxes and therefore there is no duality, I suppose is the technical phrase, there is no requirement for duality of incidence of taxation.

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 P C Montegriffo
The Hon J J Netto
The Hon R R Rhoda
The Hon E G Montado

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

Absent from the Chamber: The Hon J J Holliday

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

The Long Title

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 P C Montegriffo
The Hon J J Netto
The Hon R R Rhoda
The Hon E G Montado

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

The Hon R Mor
The Hon J C Perez

Absent from the Chamber: The Hon J J Holliday

The Long Title stood part of the Bill.

THE FACTORIES ORDINANCE (AMENDMENT) BILL, 1997

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

Clause 2

HON J L BALDACHINO:

Mr Chairman, we will be voting against section 106(4) for the very simple reason that as the hon Minister explained, when I asked for clarification, that he has the powers to actually downgrade the provisions in the law and also the provisions in the Directive. I do not know by having that clause there if actually they are going against the EEC Directives, which the EEC Directive only makes allowance in article 9 for more stringent conditions and not for any competent authorities to actually dilute what is already in the Directive. Therefore, we will be voting against 106(4).

HON CHIEF MINISTER:

Mr Chairman, the hon Member should not assume that the power is going to be exercised in breach of the Directive, he should be relaxed. The language is ambiguous at worst.

HON J L BALDACHINO:

I asked him, Mr Chairman, and the hon Member said that it could lower the category of what is in the law, if that is not the case.....

HON CHIEF MINISTER:

As drafted it certainly means that.

HON J L BALDACHINO:

Therefore, if we have a Bill that has been drafted and presented in this House it means that the Minister can actually do precisely that.

HON CHIEF MINISTER:

Does the hon Member object to the Minister having this power?

HON J L BALDACHINO:

Yes, only if we are transposing the law and it is precisely in the section where the Minister said actually that there was any activities in Gibraltar which is in the demolition of buildings, because in all the others apparently there are not..... it is just that we are transposing the law but actually the activities exist precisely in that section.

MR CHAIRMAN:

The point you are making is that you are voting against because of that, that is the point?

HON J L BALDACHINO:

That is precisely the point.

Schedule 1B

HON J J NETTO:

I circulated certain papers in which I said that in page 304 in the bottom line of the second paragraph where it makes reference to "93H" I said that I would like that to be deleted and in its place "section 112". This is obviously because of the confusion in relation to the Public Health Ordinance. Also on page 306 under section 11 the deletion in the second line of the numbers "93H" again by "112" the deletion of "93A" and the insertion of "105". The deletion of "93H" and the insertion of "112" again to take away the Public Health Ordinance and make reference to the Factories Ordinance.

MR CHAIRMAN:

That is a cosmetic arrangement.

Schedule 1B, as amended, stood part of the Bill.

The Long Title stood part of the Bill.

THE PETROLEUM ORDINANCE (AMENDMENT) BILL, 1997

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

Clause 2

HON P C MONTEGRIFFO:

Mr Chairman, there are three minor amendments. Clause 2, firstly in sub-clause 2(2)(a) hon Members will note that in the penultimate line of the first page of the Bill the word "appointed" has the "d" missing, so I move to add the word "appointed" in substitution of the current mis-spelt one. In sub-clause 2(5) of the Bill there is a reference on the first line and on the third line to sub-clause (3) that should be sub-clause (2) and in sub-clause (2)(10) which is to be found on pages 314 and 315, in page 315 in sub-clause 3(c) there is a reference to sub-section 3, that should be a reference to sub-section (2), in the last line of page 315.

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

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

THIRD READING

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to report that the Estate Duties (Repeal and Consequential Provisions) Bill 1997; the Medical and Health Bill, 1997, the Income Tax (Amendment) Bill, 1997; the Income Tax (Amendment)(No. 2) Bill, 1997; the Factories Ordinance (Amendment) Bill, 1997 and the Petroleum Ordinance (Amendment) Bill, 1997 have been considered in Committee and agreed to and I now move that they be read a third time and passed.

Question put.

(1) The Estate Duties (Repeal and Consequential Provisions) Bill, 1997;
the Medical and Health Bill, 1997;
the Factories Ordinance (Amendment) Bill, 1997; and
the Petroleum Ordinance (Amendment) Bill, 1997 were agreed to and passed.

(2) The Income Tax (Amendment) Bill, 1997; and
the Income Tax (Amendment)(No 2) 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 P C Montegriffo
The Hon J J Netto
The Hon R R Rhoda
The Hon E G Montado

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

Absent from the Chamber: The Hon J J Holliday

The Bills were read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

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

Question put on the adjournment. Agreed to.

The adjournment of the House was taken at 4.50 pm on Tuesday 22nd July, 1997.