

GIBRALTAR

HOUSE OF ASSEMBLY



HANSARD

3RD OCTOBER, 1997

**(adj to 6 October and
20 October)**

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Eighth Meeting of the First Session of the Eighth House of Assembly held in the House of Assembly Chamber on Friday the 3rd October, 1997, at 10.00 am.

PRESENT:

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

GOVERNMENT:

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

OPPOSITION:

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

IN ATTENDANCE:

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

PRAYER

Mr Speaker recited the prayer,

CONFIRMATION OF MINUTES

The Minutes of the Meeting held on the 26th June 1997, having been circulated to all hon Members were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

The Hon the Minister for Tourism and Transport laid on the table the following documents:

- (1) The Air Traffic Survey 1996.
- (2) The Hotel Occupancy Survey 1996.
- (3) The Tourist Survey Report 1996.

Ordered to lie.

The Hon the Minister for Employment and Training and Buildings and Works laid on the table the following document:

The Employment Survey Report - October 1995 and April 1996.

Ordered to lie.

The Hon the Minister for the Environment and Health laid on the table the following document:

The audited accounts of the Gibraltar Health Authority for the year ended 31st March 1996.

Ordered to lie.

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

- (1) The Annual Accounts of the Government of Gibraltar for the year ended 31st March 1996 together with the report of the Principal Auditor thereon.
- (2) Statements of Consolidated Fund Reallocations approved by the Financial and Development Secretary (Nos. 15 and 16 of 1996/97).
- (3) Statement of Improvement and Development Fund Reallocations approved by the Financial and Development Secretary (No. 4 of 1996/97).

Ordered to lie.

ANSWERS TO QUESTIONS

The House recessed at 1.02 pm.

The House resumed at 3.05 pm.

Answers to Questions continued.

The House recessed at 5.00 pm.

The House resumed at 5.20 pm.

Answers to Questions continued.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Monday 6th October, 1997 at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 7.45 pm on Friday 3rd October, 1997.

MONDAY 6TH OCTOBER 1997

The House resumed at 10.00 am.

PRESENT:

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

GOVERNMENT:

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

OPPOSITION:

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

IN ATTENDANCE:

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

Answers to Questions continued.

BILLS

FIRST AND SECOND READINGS

THE DEEP SEA MINING ORDINANCE

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to provide for the licensing of deep sea mining be read a first time.

Question put. Agreed to.

SECOND READING

HON P C MONTEGRIFFO:

I have the honour to move that the Bill be now read a second time. The main purpose of this Bill is to extend to Gibraltar the United Nations Convention of the Law of the Sea. The United Kingdom itself acceded to this Convention last July. The question of deep sea mining is being addressed by our own legislation and hence the Bill in the House today. This Ordinance, Mr Speaker, will be followed by two Orders; one conferring privileges and immunities on the international seabed authority, and the other setting up the Tribunal for the Law of the Sea for the purpose of enforcing the provisions of the Convention. The Convention regulates in a comprehensive way numerous maritime issues. These include rights of navigation; both civil and naval; the protection of water and the marine environment; rights over living and non-living resources and marine scientific research. It sets out an international consensus on the limits of the various maritime zones made up of the twelve-mile territorial sea, the two hundred mile economic zone and the outer edge of the continental margin. The Convention also sets out in Part II a regime for the mining of the deep sea bed beyond the limits of national jurisdiction. Essentially, Part II lays down the principle that the deep sea bed is a common heritage of mankind and it sets up a licensing regime for deep sea bed mining. Mr Speaker, under the provisions of this Bill deep sea mining is made an offence if it is carried out without the prior possession of a licence from the Minister. In this context, provision is made for the recognition of licences granted by authorities in reciprocating countries. Provision is also made for the payment to the Government of a deep sea mining levy of three and three quarter per cent and for the making of payments to designated organisations. Finally, Mr Speaker, provision is made for the protection of the marine environment and the Minister is given power to appoint inspectors with the powers set out in the Schedule. 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 assuming that in fact this is being done so that the Convention to which the United Kingdom has signed up in July can be extended to Gibraltar as, presumably it is being extended to other Dependent

Territories and not because we are talking about a potentially lucrative economic activity where we are going to have mining companies based in Gibraltar, although obviously it is not impossible. One thing that we would like to know is whether the actual Convention itself is available in Gibraltar to be looked at so that we can see what the context against which it is being done, obviously after the Bill has been passed in the House. It is not just something in terms of being better informed, as to what is the relevance of this, since it refers to a Convention which we have not seen. We would like to know if it is available in Gibraltar, if it is available to the Government, whether it can be made available to us so that we can look at it. The other thing is, I am assuming of course that this is a defined domestic matter and has been accepted by the United Kingdom as being a defined domestic matter. If that is indeed the case, then it would appear that there are parallels between our right in Gibraltar to have the elected Government granting licences outside the jurisdiction which should be capable of a reader clause in other areas where the question of Gibraltar's legitimacy in giving licences which other people do not wish to recognise. I would have thought this provides a useful parallel which can be capitalised upon to defend that right that we believe the Government have to be treated as being equal to any other state within the Union and although this is not a Community thing, since it requires that the licences be recognised if issued by a reciprocating country it would mean, of course, that we would only need presumably to limit ourselves to recognising the licences of those other states that recognise Gibraltar licences irrespective of whether they are EU Members or not. We will be voting in favour of this Bill.

HON P C MONTEGRIFFO:

Mr Speaker, it is indeed, the implementation of this legislation is very much Convention driven. It is not on the back of any commercial venture which is being suggested to the Government. My understanding indeed is that the UK itself had only implemented this in July, is under pressure to have the Convention passed in Gibraltar because the package, so to speak, envisaged in the Convention with regard to the UK required the implementation of the Convention in Gibraltar, so it is already following suit in making sure that we discharge an obligation which the UK undertook would be completed when it itself negotiated the Convention. Copies of the Convention are available and I can certainly make those available to the Opposition Members. With regard to the question of defined domestic matter, well clearly we have got legislation in the House that has been passed by this

House and it is the Minister charged with Trade and Industry that is given power to issue the licences and indeed to collect the fees and therefore it is interesting indeed that the Gibraltar Government have been given almost an extra territorial legislative capacity over the phrase "extra territoriality" in the context of the sea. This is somewhat perhaps inappropriate but certainly the fact that we are going beyond the strictest sovereign waters in this legislation is quite an interesting development. I thank the Opposition Members for their support.

Question put. Agreed to.

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

Question put. Agreed to.

THE RECOGNITION OF PROFESSIONAL QUALIFICATIONS ORDINANCE

HON DR B A LINARES:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar Council Directive 89/48/EEC on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration, or which are of degree level or equivalent and to transpose into the law of Gibraltar Council Directive 92/51/EEC on a second general system, for the regulation of professional education and training to supplement Council Directive 89/48/EEC as amended by Commission Directives 94/38EC and 95/43EC and the Decision of the EEA Joint Committee No. 7/94 of 21st March 1994 amending Annex VII to the EEA Agreement in relation to Council Directive 92/51/EEC to be read a first time.

Question put. Agreed to.

SECOND READING

HON DR B A LINARES:

I have the honour to move that the Bill be now read a second time. This Bill transposes into Gibraltar law EEC Directives 89/48, 92/51 and EC Directives 94/38 and 95/43 and Decision No. 7/94 of the EEA Joint Committee.

Mr Speaker, but this Bill goes beyond mere compliance with European Directives. It essentially serves to provide an instrument within Gibraltar legislation to regulate professions which at present remain outside statutory control. Until recently the only professions regulated by law in Gibraltar were those of barrister, solicitor, Commissioner for Oaths, Notary Public and Company Auditor. These are listed in the Bill under Schedule 5. In July this year through the Medical Health Ordinance we also transposed European Directives, some of them going back as far as 1975 regulating medical and nursing professions and these are listed in Part 1 of Schedule 1. Part II of Schedule 3 provides for the tabulation of professional courses designated under the provisions of Section 28(1) whereby the Minister is empowered to designate regulated professions. The situation in Gibraltar is that recognisable professional qualifications coincide with those similarly recognised and regulated in UK but should the need arise in the future to regulate purely domestic qualifications, with the passage of this Bill the necessary statutory mechanism will now be in place.

Mr Speaker, the Bill identifies two levels of professions and professional qualifications responding to the same distinction made in European Directives. Directive 89/48 is on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration which are of degree level or equivalent. Directive 92/51 is on a second general system for the regulation of non-degree professional and training courses. Parts 1 to 5 of our Bill responds to the latter second general system and Part 6 to the former, namely the general system regulating degrees and equivalents. It still, Mr Speaker, fulfils two main purposes. In the first place it creates a structure which will allow persons who are recognised in Gibraltar as having passed a course of study or training leading to a trade or profession and as I explained earlier this is limited, at this stage, to recognisable UK qualifications to be so recognised elsewhere in the Union and the European Economic Area, that is, Iceland, Norway and Liechtenstein. Conversely, this Bill also provides for the recognition in Gibraltar as possessing a trade or profession of those persons who are recognised as such in another Member State. In Part 3 the right of migrants in Gibraltar are set out imposing duties on a designated authority not to refuse applications by migrants if they hold the required qualification. Of course, the recognition of a professional title does not necessarily guarantee either employment for a migrant or even private practice if that practice is regulated locally by requiring an adaptation period or an aptitude test as provided in Part 4 of the

Bill. Naturally, in Part 5 provision is also made for the right of appeal by migrants against the decisions of a designated authority. Similar provisions are contained in Part 6 in relation, as I have explained before, to qualifications covered by the general system, namely, degrees or equivalents. Finally, Members of the House should note that the matters covered by this Bill are the subject of infraction proceedings against the UK as Member State by the Commission.

I commend the Bill to the House.

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

HON J J BOSSANO:

I can understand the desire to provide for the transposition of these Directives into our national law in order to avoid infraction proceedings. In the past the argument that was put was that these Directives were intended to ensure that there was no obstacle put in the path of Community nationals which seem to exercise the right of establishment by national qualification requirements which did not recognise the comparable qualifications of another Member State. Therefore, if a particular profession in Gibraltar is not regulated the view was held that we did not need to remove a barrier because the barrier did not exist and that the purpose of this Directive was in fact to attack barriers to movement where people suspected that the professional qualifications requirements were as much intended to protect the domestic worker as they were intended to do anything else. The fact that most of the qualifications that will allow people to exercise their right of employment, assuming they have the right of establishment and assuming they have the right of employment, if one looks at the lists provided in Schedule 3 and we look at the professions that are regulated by law in Schedule 5 we can see that there is an awful lot of things which currently are not regulated and some which are regulated. The ones that are regulated are mainly the ones I think that were included in the last Ordinance dealing with the medical and the dental profession and so forth, but there is, for example, in Austria one of the professions seems to be a masseur, here we do not require anybody to come out with qualifications, nor do we require our own people if there are any to have them so it is quite obvious that we are, theoretically, recognising qualifications so that people may exercise professions in Gibraltar which in fact at present they would exercise without those qualifications anyway. I think the nature of the argument that was being put to the Commission, which obviously the Commission has not accepted and has

insisted that whether it is relevant or irrelevant they want to see it black upon white and that is what we are doing and of course since this is not going to significantly change anything, there is no point in inviting infraction proceedings over a theoretical argument which has no practical effect. I think the one thing that in the Ordinance which has nothing to do with the Community dimension is the proviso in section 28 for new designations to be introduced in the future. The fact that that can be done by Order and that therefore the whole Ordinance can be made to apply to an occupation to which it has not applied before is something that we are a bit unhappy about. It seems to us that our experience of this kind of situation in the past has been that when you introduce qualifications you have tended perhaps to affect local people who may have been doing the job for a very long time and then find themselves having been giving a perfectly satisfactory service having acquired perhaps a knowledge by experience that they have not themselves had the opportunity to obtain those qualifications and that the regulation of their profession has I think happened at one stage with the ability of locally-trained accountants to do auditing where it was argued that they could audit some kind of companies and not other kinds of companies and they found themselves at one stage cut out of quite a big chunk of the market when that was not the intention. It was in order to produce a definition of auditors that would meet the requirements of Community Directives on Company Law. The safeguard of those interests is not protected by the very simple definition in section 28 that by notice in the Gazette somebody can suddenly find themselves in a regulated profession whereas the day before he was not in a regulated profession. That would require more than simply adding the particular profession to a list of existing ones because presumably the Government, in circumstances such as that would want to provide protection for those already engaged in that activity and I think we would want confirmation that in the event of that happening that would be the policy of the Government so that we have got a record in the House if and when that happens that that would be the way it would be approached. Other than that, I think I would simply want to draw attention to the fact that in the interpretation part of the Ordinance we see on page 334 that "relevant state" means where the context requires Gibraltar and I think it is the first time that we are putting in our statute book that Gibraltar is a state and, of course, we support that concept.

HON CHIEF MINISTER:

Well, of course, Mr speaker, that is not what it says.... but I note that the hon Member is still in a pioneering mood.

Mr Speaker, in respect of his first main point, the position is exactly as the Leader of the Opposition has said. There was this attempt on the part of the United Kingdom, not just in relation to this legislation, but in relation to a whole raft of others, even interestingly as it affected the UK, not just Gibraltar, which went something like this, "As in the common law system you can do whatever the law does not specifically prohibit. There is no need to transpose a Directive which purports to regulate that which the law does not already regulate because it follows that if it is not regulated you can do it." That argument, as the hon Member has said, has not prospered, in other words, the Commission have rejected the UK's view that simply because the UK law is silent in prohibiting something, that therefore that avoids the legal obligation to transpose the Community's Directive. That is not just limited to this area but it extends to all the other areas in which the UK have attempted to deploy that argument which arises from the difference between the common law and the sort of continental codified system of law. The second point that the hon Member made, I think I would not want so much as to give a formal assurance to that effect but in the absence of a very good reason, which certainly would have to be explained, the Government policy would certainly be not by listing any profession to exclude from the possibility of continuing to practice that profession in Gibraltar anybody that has, prior to that date, been practising it. So if we could just loosely call those transitional provisions for existing performers or practitioners of any listed profession, the answer is that certainly it would be Government policy to save their position in any future listing.

HON DR B A LINARES:

Mr Speaker, as regards that last point. In seeking assurances that in the exercise of the powers granted to the Minister under Section 28, the fears that we might regulate professions which have already been practised and introduced new constraints not only I shall give assurances as the Chief Minister has done in terms of policy but also within the mechanism set by the law. Under Section 34 there are three areas of regulation which are viable, aptitude tests, adaptation periods and also professional experience, is also legally established as an area of qualification, if you like to put it that way.

HON J J BOSSANO:

If the hon Member will give way? When we looked at that we understood that to be something that the designating authority could apply to a migrant coming to practice, that is how we read that section, that is why we did not think that was enough to cover the rest. That is our understanding, that this is what the Gibraltar authority that regulates the profession may say to the migrant that wants to come in. But what we are talking about is creating a new designating authority for a previously unregulated profession where the people already practising it would not be people coming from outside.

HON CHIEF MINISTER:

Yes, I think the hon Member is right in saying that that particular section relates to migrant workers but it goes without saying that the domestic practitioners, ones own practitioners, cannot be in a worse position than migrants, so if the law contains a mechanism that allows one to take into account experience in the case of the migrant it cannot be argued that one is not allowed to take into account the same criteria in respect of ones own practitioners when extending the transitional provisions. The hon Member is right that that section deals on its terms with the migrant worker.

HON J J BOSSANO:

As we understand it, this is something that the designating authority can do not to reduce the requirement but when it is not satisfied. If somebody comes along and wishes to exercise a profession and the designating authority is unhappy about the suitability of the qualifications then they can ask for an adaptation period or something else. Frankly we did not see this as giving the migrant worker more rights than the local person. We saw this as giving the authority, the attribute of in looking at the qualifications and in looking at the circumstances of the Gibraltar market saying, "Well, look, you need to go through some test or some period of training or adaptation to suit what you have learned to the profession which you want to enter in Gibraltar". Frankly, it did not seem to us to be a mechanism capable of achieving the point that we raised but we are satisfied, in any case, that the point is something that the Government would want to be in tune with, if and when, section 28 is triggered.

Question put. Agreed to.

The Bill was read a second time.

HON DR B A LINARES:

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 TRAFFIC ORDINANCE (AMENDMENT) ORDINANCE 1997

HON J J HOLLIDAY:

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

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that the Bill be read a second time. Mr Speaker, the purpose of this very short Bill is simple. It is merely to replace all reference to Test Certificates in the Ordinance by Road Worthiness Certificates. This is being done in order to bring us in line with the term commonly used in EEC Directives. I commend the Bill to the House.

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

HON J C PEREZ:

Mr Speaker, just to ask the Minister whether this is something that has been requested, or is deemed necessary, or it is just that we feel that in order to avoid confusion we need to change the interpretation? That is all, there is no objection from Opposition Members.

HON CHIEF MINISTER:

It is a legislative proposal that is departmentally driven, that is to say, it has come up from the officials in the Vehicle Test Centre rather than from any policy. I cannot, unfortunately, give you chapter and verse about why they thought it appropriate but if the hon Member is interested in that reasoning we can provide it.

Question put. Agreed to.

The Bill was read a second time.

HON J J HOLLIDAY:

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

Question put. Agreed to.

THE SUPREME COURT (AMENDMENT) ORDINANCE 1997

HON ATTORNEY-GENERAL:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar Council Directive 77/249/EEC to facilitate the effective exercise by lawyers of freedom to provide services and further to bring the position of Irish barristers and solicitors who in future wish to practise in Gibraltar, into line with Community provisions be read a first time.

Question put. Agreed to.

SECOND READING

HON ATTORNEY-GENERAL:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this is another in a series of legislative measures to facilitate the effective exercise by various professions in the European Economic Area of their freedom to provide services in Gibraltar. Hon Members will recall that there was a Bill earlier in the year transposing a Directive in respect of architects and will remember that before the summer recess there was another dealing similarly with doctors, dentists, pharmacists and midwives. On this occasion the Directive being transposed enables lawyers qualified in states of the European Economic Union to provide services in Gibraltar. It does not extend to United Kingdom lawyers because as hon Members will know there are already special bilateral arrangements whereby a UK lawyer can be called in Gibraltar for the purpose of the case which they are doing here. The list of EEA lawyers is set out in Part I of the Schedule and it is right to say that the right to provide services is limited to the extent that the lawyer is not entitled to undertake conveyancing or probate. It is important perhaps to say that this is not a recognition of qualifications measure, it simply allows a Community lawyer to practise in Gibraltar wearing the same hat that that Community lawyer would have worn in their own country. An example of this is that a French lawyer providing services in Gibraltar would practise as a French advocat. If the lawyer wishes to go into Court and to exercise right to audience, they are entitled to do that but on that occasion they must be accompanied by

a member of the Gibraltar Bar. There are certain disciplinary controls set out in the Bill and those are exercised by the Chief Justice.

Mr Speaker, the Bill also regulates the position of Irish lawyers because at present Irish lawyers have occupied exactly the same position as United Kingdom lawyers within Gibraltar, that they could be called to the Bar simply to carry out a case. In future the position will be that Irish lawyers will have exactly the same rights as other EEA lawyers but no more. If they wish to be called in Gibraltar to the Bar to practise here what they would have to do is to satisfy whatever conversion course was needed in the UK and then be called to the Gibraltar Bar. In the interest of fairness, though, it has been decided that Irish lawyers who were already here before this provision comes in will not be caught by it, so no existing Irish lawyers shall be caught by it. On the basis of reciprocity the right of audience in all Member States given to persons designated as barristers or solicitors in the United Kingdom and all Gibraltar lawyers are designated barristers and solicitors in the United Kingdom and therefore will have that right.

I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON ATTORNEY-GENERAL:

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

Question put. Agreed to.

**THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE
(AMENDMENT) ORDINANCE 1997**

HON ATTORNEY-GENERAL:

I have the honour to move that a Bill for an Ordinance to amend the Interpretation and General Clauses Ordinance be read a first time.

Question put. Agreed to.

SECOND READING

HON ATTORNEY-GENERAL:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this is a very short piece of legislation and the purpose of it is simply to amend by widening section 24 of the Interpretation and General Clauses Ordinance. The present section 24 that provides where the Governor has the power to make subsidiary legislation with certain safeguards that he should have the power to exercise that retrospectively. The current Bill simply makes a logical extension of that power to the situation where the Government and Ministers have a power to make subsidiary legislation, that they, again, should be able to do it retrospectively. I commend the Bill to the House.

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

HON J J BOSSANO:

Mr Speaker, we support this amendment because all that it is doing is allowing the subsidiary legislation that is signed by a Minister because the Ordinance says the Minister has the power or by a Minister because the Ordinance says the Government has the power to do what it would have been possible to do if it said "Governor" instead which is what it regularly used to say before. I think what perhaps is required, and this does not provide, is a distinction as to when in our laws the Governor means the Governor and the Governor means the Government because in the past, in this House, it was taken for granted that the enabling provision in our legislation allowing the Governor to make subsidiary legislation was the power that the Governor exercised on behalf of the Government and that therefore there was no question as to what it meant. It was only when some doubts started being raised about what it meant that it was found necessary to say the Government for the avoidance of any doubt and, more recently, it has become Minister in a number of Ordinances. I think, therefore, I am making the point because it gives me an opportunity to do so but I think the Attorney-General or the Government should consider, in looking at those Ordinances where there is the Governor, that there ought to be a way of knowing whether the Governor means the Government or the Governor means the Governor when it comes to the responsibility for introducing subsidiary legislation. Obviously, our view is that it was always intended, from 1969 onwards, in all the laws that were brought in then, that in all areas which are defined domestic matters obviously the subsidiary legislation is also defined domestic matter and the Governor is acting

really as the executive head of the elected Government and not on his own initiative. That is why, as far as we are concerned, since that was what the Governor was supposed to mean originally, then by spelling out that it is the Governor or the Government or any Minister charged under the Constitution, we want to make clear that that does not mean, for us, that if it is the Governor it is the Governor in the right of the United Kingdom Government because there is an awful lot of older legislation where when the word "Governor" was brought in, it was not brought in with that intention. At least not in the years that I have been here since 1972.

HON CHIEF MINISTER:

I can assure the hon Gentleman that we continue to take for granted all the things that he used to take for granted in this respect. As far as we are concerned the word "Governor" in respect of defined domestic matters means the Governor acting on the advice of the Government and that in areas of defined domestic matters there is subsidiary regulations that are signed by the Governor or by the Deputy Governor on his behalf, are those which are put up to him by the Government and that no one has challenged, I do not know if the hon Member appears to be implying that the matter was challenged in his time. I can tell you that it has not been challenged in my time and therefore I see no need to provide in legislation for what, as far as I am concerned, is a statement of the obvious and that is that if the principal legislation is a defined domestic matter, all the more the subsidiary legislation must be a defined domestic matter as well and I see no merit in crystallising the issue which, as I say, does not exist, at least it has never been raised with me by seeking to say in legislation what is a simple matter of constitutional interpretation. I can assure the hon Gentleman that on the first occasion that there is a challenge of that view I will come running to the House to report it.

Question put. Agreed to.

The Bill was read a second time.

HON ATTORNEY-GENERAL:

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

**THE CIVIL JURISDICTION AND JUDGEMENTS ORDINANCE 1993
(AMENDMENT) ORDINANCE 1997**

HON ATTORNEY-GENERAL:

I have the honour to move that a Bill for an Ordinance to amend the Civil Jurisdiction and Judgements Ordinance, 1993, be read a first time.

Question put. Agreed to.

SECOND READING

HON ATTORNEY-GENERAL:

I have the honour to move that the Bill be now read a second time. Again, this is a matter of Community obligation and this Bill is an amending provision and should be read in conjunction with the Civil Jurisdictions and Judgements Ordinance of 1993. Hon Members will recollect that that Ordinance was enacted but never commenced and the reason why it was not commenced was because the United Kingdom had not extended the Brussels and the Lugano Conventions, upon which it is based, to Gibraltar. The aim of the legislation is that the 1993 Ordinance will come in simultaneously with this amendment and the 1993 Ordinance basically deals with recognition and enforcement of foreign civil judgements. The Brussels Convention is an intra-Community provision and it gives the European Court of Justice the right to interpret the Convention. The Lugano Convention is a mirror image of that but as opposed to being intra-Community it is an arrangement between EEC and EFTA countries. The 1993 Ordinance also regulates the enforcement of civil judgements between Gibraltar and the United Kingdom. It will mean that the Judgements (Reciprocal Enforcement) Ordinance will have to be amended in Gibraltar in so far as it applies to the United Kingdom. The 1997 Bill now before hon Members seeks to amend a small part of the 1993 Ordinance and this amendment quite simply is to put into effect the judgement of the European Court in the case of Kleinwort Benson Ltd and the Glasgow City Council and, effectively, what the judgement says is that there is no role for the European Court in interpreting the Brussels Convention as between England and Scotland. There are national courts who can do that and between England and Scotland there is a common appellate court in the House of Lords. Mr Speaker, Gibraltar, effectively, mirrors that position, that there is no role for the European Court in interpreting the Convention as between Gibraltar and the United Kingdom. Hon Members are right to say this, there is no question of the separate legal jurisdiction of Gibraltar in any way being affected or diminished by the rationale in Kleinwort Benson. The rationale is, quite simply, that Gibraltar and the United Kingdom are not separate contracting parties but they are separate legal

jurisdictions and the position is exactly the same as it was between England and Scotland that one has separate legal jurisdictions but there is one contracting state. The situation is exactly the same in relation to Gibraltar, that one has separate jurisdictions, one contracting state and one final appellate Court of Law. There are minor amendments, hon Members will see, to Schedules and those minor amendments are simply to bring the Schedules up to date with the current position as both to the Lugano and the Brussels Convention. The likely commencement date of this legislation, were it to go through, is February 1998 because under the terms of the Conventions the United Kingdom has to give three months notice to other Convention parties. I commend the Bill to the House.

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

HON J J BOSSANO:

Mr Speaker, the hon Attorney-General has told us that if this goes ahead it will be 1998 before it commences because of the notification that has to be given to other States party to the Convention that it has been extended to Gibraltar. Does he have any knowledge of why it is that this has not happened already given that the original Ordinance which was intended to extend the Conventions to Gibraltar was passed by the House in 1993? I can understand that if post-1993 there has been a case which requires a change in what was previously legislated so that the results of that case are reflected, then I can understand the need for that amendment, but can he explain why the Convention was not extended to Gibraltar earlier? Or is there a connection between the two things?

HON CHIEF MINISTER:

Mr Speaker, as the hon Member correctly says this legislation was originally brought to the House by his Government and legislated in this House in 1993. I cannot explain the delay between that date and the 16th May 1996 as to why during those three years the previous Government did not press the UK Government to do the necessary to make this legislation a live issue, in other words, do in effect what it has agreed to do now. What I can tell the hon Members is that since we have been in office we have taken the view, which is the view that some of us in Government had as legal practitioners, that this legislation is of considerable commercial value to Gibraltar and we have taken it upon ourselves to press the UK Government, regularly since we have been in office, as to why it had not done the necessary to enable

this legislation to be commenced and under pressure of that insistence the Lord Chancellor's Office have finally agreed to do it. I cannot explain whether there has been any reason why the Lord Chancellor's Office have dragged their feet or whether there is any reluctance on their part for this to have been extended to Gibraltar or not. The position as we found it when we arrived in office was that we were aware that it was on the statute book; that I personally and professionally had had several conversations with the previous Laws Draftsperson about when this was going to commence and that when we came into office we took, because we were, I suppose, knowledgeable, personally and professionally about the importance of commencing this legislation to Gibraltar, we thought, we have taken a particular interest in pushing London and we are very satisfied and very happy that albeit after four or five years, that they have finally done the necessary and the commercial value of this to Gibraltar now is the same as I suppose it was when the hon Members decided to bring the original legislation to the House and that is that it makes the jurisdiction of Gibraltar much more competitive, not just in certain admiralty matters but in other commercial litigation generally and the reason why it has now happened, as opposed to three years ago, I think is just because we have taken a particular political interest in rushing along whatever reluctance there might have been in the Lord Chancellor's Office as to why that had not happened before the 16th May last year, I cannot shed light. It might well be that the matter was raised but not with sufficient insistence to cause London to focus on it and actually do it.

HON ATTORNEY-GENERAL:

May I simply add to that that as far as I am aware there is no technical reason why it could not have come in.

Question put. Agreed to.

The Bill was read a second time.

HON ATTORNEY-GENERAL:

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

Question put. Agreed to.

THE GIBRALTAR SAVINGS BANK (AMENDMENT) ORDINANCE 1997

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

Question put. Agreed to.

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to move that the Bill be now read a second time. The Bill is a very short one which would enact a proposal set out in the Government's Estimates 1997/98 laid in and debated earlier this year in the House, to exclude various Government Funds for the purpose of calculating the statutory reserve to be held by the Gibraltar Savings Bank. Schedule 13 of the Gibraltar Savings Bank Ordinance sets out what may happen in any year that the revenue of the Savings Bank should be more than sufficient to defray the interest due to depositors and the expenses of the Bank. Any surplus can either be retained in the Bank or transferred to the Consolidated Fund provided that the assets exceed the liabilities by 10 per cent. The Bill inserts a new clause 13(2)(c) which restricts the 10 per cent rule to third party deposits and debentures, i.e. monies invested with the Bank by members of the public and non-governmental organisations and would exclude liabilities in respect of any Government wholly-owned company or corporation, any special fund or any other Government deposit. When the 10 per cent rule came into operation nearly a decade ago total liabilities of the Savings Bank were solely represented by third party deposits. Increasingly, through the 1990s Government Funds have been lodged with the Savings Bank and now all Government Funds, whether the Government itself, wholly-owned companies, statutory bodies or the remaining special funds are held by the Savings Bank. For the purpose of calculating the statutory reserve we do not feel it is necessary for the Government to include its own funds but this is of course prudent to continue to retain the 10 per cent reserve in respect of third parties monies. Mr Speaker, only on two occasions over the last decade the assets of the Bank exceeded the liabilities by 10 per cent. By the 31st March 1997 the assets of the Savings Bank exceeded the liabilities by some £20 million which is equivalent to about 16 per cent. In the Estimates, earlier this year, the Government set out the transfer to the Consolidated Fund of £7 million of that surplus which is the monies held over the current formula for calculating the 10 per cent. The transfer of a further £8 million was set out in the Estimates but is subject to

the change of law now before this House. The remaining £5 million will continue to be held in the Savings Bank as the 10 per cent statutory reserve in respect of third party deposits. I should add, Mr Speaker, that if the amendment to the GSB Ordinance is passed, once the monies are transferred to the Consolidated Fund, the use to which they can be put can only be determined by this House. I commend the Bill to the House.

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

HON J J BOSSANO:

We do not support this measure, Mr Speaker. Let me say that if the Bill is passed as the Financial Secretary says, we know already what is going to happen to the money because in the Estimates it shows that money going into the reserves and then being passed on to the Improvement and Development Fund. Opposition Members take the view that if the Government wish not to provide the additional cover for its own deposits then it ought to at least go back to the level of reserve that existed before which was 15 per cent, that is to say, the Savings Bank Ordinance was amended to reduce the level of reserves from 15 per cent to 10 per cent at the time when its liabilities were increased substantially but it was liabilities to its owner because of course deposits of the Government in the Bank are liabilities of the Bank which it owes its owner because it is a Government owned bank. I think when we are talking about reserves and we are talking about the 10 per cent or 15 per cent we should not forget that the reason why we have the requirement for a reserve is in fact because the Bank has got no share capital, it is a statutory body set up by law without share capital. The 10 per cent or the 15 per cent is the equivalent of what the share capital would be in a commercial bank and under Community law if this bank required to have a licence then it would be in all sorts of trouble quite apart from the fact that it would require to have free capital of its own which would be in excess of 10 per cent. There would be a question of having deposits from one customer which take up a very big share of its total deposit base which I think is what the Financial Services Commissioner has been saying to some people in the banking sector, that for the question of the prudence of the liability of the Bank..... Of course, we believe that the Savings Bank is in a special position just like the National Savings Bank in the United Kingdom was and that when the Directive originally was introduced in the European Union almost every Member State then and since made sure that their Savings Bank were excluded from the provisions and ours was not. We, at one stage, thought that in order to comply with

Community law we would need to make it into a commercial bank because it was not listed as the Savings Banks in other Member States are. When we compare what the Savings Bank in Gibraltar is in the context of other banking institutions, it seems to us that we must not forget that if it were a bank that was state-owned but set up as commercial entities are it would have what would be the equivalent of the reserve as free share capital which is there obviously as a guarantee for the depositors. We can understand the view that the owner of the bank does not need to have that safeguard and that guarantee because in any case the Ordinance makes quite clear that if the bank actually were to have a shortfall in its liabilities so that its own reserves were insufficient it becomes a charge directly on the Consolidated Fund. so you can argue that the Consolidated Fund is there as a secondary reserve. Nevertheless, we feel that the figure for private deposits ought to be the 15 per cent that there was there initially and not the 10 per cent that was brought in when the deposits were increased as a result of Government companies putting their money in the bank and the Government's own funds. In any case, the figure can be altered if there is a particular need for it in any particular year. It is there more as a guideline than as a rigid requirement since it is the figure laid down or such other figure as the Governor may decide and we consider the Government in this case is a defined domestic matter and it means the Government.

HON CHIEF MINISTER:

I suppose the hon Opposition Member will have understood the principal reason why the Government are taking this step. First of all, we believe that such reserves as the Government of Gibraltar have should be transparent, that is to say, they should be contained in a Consolidated Fund reserve and not "concealed" or hidden, in a sense, as the reserves of the Savings Bank which would eventually become apparent when the accounts of the Savings Bank are themselves published, a considerable period of time after the event to the period to which they relate. This is a part of our transparency in public finance measures whereby we say the House of Assembly is entitled to know at any given time what are the real reserves, what is the real financial disposition of the Government of Gibraltar and if the Government of Gibraltar in effect have reserves which are by one mechanical means or another available to it as the surplus of the Gibraltar Savings Bank then those should not be sitting as reserves of the Savings Bank but rather in another fund which we are calling the Consolidated Reserve and in effect what we are doing is getting all the reserve balances and putting them where they can all

be seen as one lump sum. The future of the Savings Bank is itself under consideration precisely to avoid the Savings Bank, for example, having to be a major contributor to a deposit, I call it the lifeboat fund, but the technical name for it is the Depositor Guarantee Scheme. Given the profile of the depositors that the Savings Bank has got I think it would be one of the biggest contributors, I think it would be the fourth or fifth biggest contributor to any Depositor Guarantees Scheme that is being devised by compulsion under EU Rules and therefore the Government are reviewing the whole status and positioning of the Savings Bank because certainly we are not willing to expose the taxpayer to liability, to substantial liability, as a principle player, through the Gibraltar Savings Bank, in the Depositor Guarantee Scheme for the benefit of commercial operations. Mr Speaker, I believe, although I stand to be corrected and I would not wish to be held to this figure, but I feel that the capital ratios to which the hon Gentleman has indirectly alluded in the private sector banks is eight per cent and that, to the extent that the equivalent of the reserve of the Savings Bank is more or less the equivalent of capital ratio, that 10 per cent is in fact above what would be required of this bank were it a commercial bank. In any case the hon Member will not lose sight of the fact that given the very conservative and prudent investment policy of the Gibraltar Savings Bank it is extremely unlikely ever to need to have recourse to any part of its reserve, even the 10 per cent, and therefore I certainly see no need, let alone any good case, for restoring the reserve to 15 per cent, increasing it to 15 per cent from the 10 per cent even accepting the fact that we are now stripping out Government owned deposits from the question.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Could I just add a point of clarification I did not allude to in my opening remarks. I must reiterate that the Savings Bank since 1989 has never actually achieved the 10 per cent threshold and in fact the actual range has ranged from 4.26 per cent which is the lowest year in fact to the highest year which is the last financial year which is 16.14 per cent. In a way, this is a bit of a theoretical discussion because it has never actually attained that level.

HON J J BOSSANO:

It is not a theoretical discussion because in fact the percentages that the hon Financial and Development Secretary is calculating is on the total deposit base without stripping out the Government. So it is not theoretical because by stripping out the Government he

will then find that of the public it has never been as low as 10 per cent which is what the new Bill seeks to do.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

In fact the lowest it will have been was in 1989 when it was 4.26 per cent and I think, when we strip out, it will not quite drop to that level.

HON J J BOSSANO:

The point that I am making Mr Speaker is that in looking at the 10 per cent it is no good saying, "Well, it has never been above 10 per cent". It has never been above 10 per cent of the total deposit including the Government but it has certainly been above 10 per cent on many, many, many years if the new definition of what the reserves are had been in place, that is to say, if the Financial and Development Secretary goes back each year and strips out all the publicly owned deposits and then relates the reserves of those years only to the deposits from individual members of the public, as opposed to those controlled by the Government, then he will find out that it was regularly well above 10 per cent.

Question put. The House voted.

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

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

The Bill was read a second time.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

Question put. Agreed to.

THE PUBLIC HEALTH (AMENDMENT) ORDINANCE 1997

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

Question put. Agreed to.

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to move that the Bill be now read a second time. This is another short Bill which seeks to enact two policies of the Government. The first is to make provision for the grant of a 20 per cent discount to all ratepayers of non-domestic or commercial properties who are fully up to date with the payment of their rates. By "up to date" we mean that there are no outstanding quarterly payments of rates owing prior to the 1st July 1997 or if monies are outstanding the ratepayer has entered into an agreement for that payment and the agreement is being honoured and complied with. The rates discount forms part of a package of Government measures to support the development of the private sector economy by reducing the costs businesses face and thereby boosting the creation of jobs. The introduction of the discount will also contribute to reducing arrears of rates which currently stand at over £4 million, the bulk of which is owed by non-domestic ratepayers. Those ratepayers who are in arrears, which are not the subject of an arrears agreement should be aware that the Government reinforcing its efforts to recover all outstanding monies and Land Property Services will be filing complaints in the court for the recovery of monies owing. The second provision of the Bill, Mr Speaker, extends the payment of rates to dwelling houses located in the Upper Rock. This is an anomalous, historical matter that stems from the days when the entire Upper Rock was controlled by the Ministry of Defence and as I understand it there was no infrastructure provided by the former City Council. Large areas of the Upper Rock have now been transferred by the Ministry of Defence and there is no logical reason why hereditaments in the area should not be subject to payments of rates.

I am sure hon Members, Mr Speaker, will be interested in the projected financial impact to the Government revenues of this legislation. The Government's Estimates 1997/98 provided for £12.6 million to be collected in general rates. This estimate now looks to have been optimistic.

This is primarily because of the reduced contribution by the Ministry of Defence from £2.8 million in 1996/97 to £2.5 million in this financial year due to them transferring properties together with some revaluation of non-domestic properties and the effect of Development Aid coming on stream. The revised forecast revenue from general rates, before application of any discount is likely to be closer to £12 million. Land Property Services have estimated that the cost of the discount to non-domestic ratepayers over the next two quarters of the financial year could be as high as £0.5 million but set against this will be the increased settlement of arrears. Arrears per quarter were running at over £130,000 but have already reduced to £42,000 in the quarter that has just passed. There will also be increased revenues from agreements and pursuing the outstanding collection of arrears through the courts where necessary. The bottom line of all this is that we forecast that collecting rates revenue in this financial year should be around the £12 million mark that I referred to earlier. The cost of the discount for a whole year if every non-domestic ratepayer was up to date with their rates at today's prices and rateable values, would be in the region of £1.4 million out of a rates bill for non-domestic properties that currently stands at just over £7 million. Set against this, would be the recovery of a substantial amount of rates arrears which, as I referred to earlier, stood at over £4 million at the end of the last financial year. Based on the proportion of non-domestic ratepayers to domestic ratepayers, well over 80 per cent of these arrears are owed by non-domestic ratepayers. With respect to the Upper Rock it will take Land Property Services a few months to survey, measure and value those houses that are to be included in the valuation list. In conclusion, Mr Speaker, this Bill is designed to boost the economy and in a way that will substantially reduce the amount of rates arrears as well as maintaining Government revenues. 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, I understand these measures are part of a package of Government measures introduced or announced last February. They were predominantly geared towards helping businesses that were struggling and helping those businesses that were able to meet their obligations to expand, creating further jobs in the private sector. To us it seems that this measure does not quite do that in the sense that this is a discount for down payment. The difficulties that there are then with businesses who are struggling and my understanding was some months ago that

this was, as I said earlier, one of the measures aimed to help the struggling business is that in effect two competing businesses, one of whom has no difficulty in making payments because his business is going well and another who is struggling to make the payments and indeed cannot make the payments on time, will now not be the five per cent penalty that there was for late payments as provided for in the Public Health Ordinance but in fact a variance of 25 per cent because the person that is not making the payments on time will not qualify for discount and on top of that will have the five per cent penalty imposed on him. The differential between the businessman who is making his payments on time because he is able to and one because he is not able to is significant. It is also interesting, Mr Speaker, to note that the large bulk of arrears are from non-domestic rates. It is difficult to see how the reduction will bring those arrears down. I assume the only way it will bring them down is by forcing businesses to settle their arrears or enter into agreements for the settlement of arrears which will then enable them to take advantage of the discount. Mr Speaker, we will be abstaining on the Bill as it stands and proposing an amendment.

HON CHIEF MINISTER:

Mr Speaker, I have to say that I disagree on almost everything that the hon Member has just said. It seems to me an extraordinary argument. The Government's policy in relation to this particular measure is driven by two different factors - one is to deliver help to business and the other is to deliver help to business in a way which additionally and almost as a by-product enhances the collection of arrears. I can tell the hon Members the Financial Secretary has already said that it is already having that second effect, in other words, businesses in order to gain access to the discount are either bringing their payment up-to-date or entering into repayment agreements. There is no doubt that this will substantially improve the cash flow aspect of rates collection from the commercial sector generally. Turning now to the first of the two reasons - Mr Speaker, the Government are as interested in protecting jobs in what he calls the unhealthy parts of the private sector as in the idea that we should not assist the unhealthy parts of trade because that gives them an unfair competition, in other words that gives them unfair competition with those that are paying is not acceptable. We start from the premise that all businesses, whether they are going well or they are going badly must pay their dues in rates and then across-the-board we say we believe that the private sector, which is where jobs not only have to be created but indeed the existing jobs protected, need to have some of its cost burden eliminated so that, those that are in

difficulty can survive the difficult period and those that are not in difficulty or not in as much difficulty, are better placed to grow. We give everybody the same facility. There is no element of discrimination. We are saying to people that pay their dues, "If you pay your dues you get the 20 per cent discount" and we say to everybody that has not paid their dues, "If you do not pay your dues you get a five per cent penalty", and that applies equally to those that pay and to those that do not pay. What the hon Member might have been suggesting is that we are in effect forcing to pay those that really could not afford to. We are not forcing them to pay, we are just not giving them the benefit of the discount if they do not but it is not as if we are putting a pistol to their head. I believe that there ought to be an enforcement mechanism for people who do not pay their rates but that enforcement mechanism is not this. We are not saying to people, "The procedure that you will face if you do not pay rates..... "This legislation does not say, "It is going to get tougher". In fact, it is going to get tougher, the Government are going to take a much more aggressive approach to people who own businesses that do not pay, not just their rates contributions but their PAYE and other contributions. In doing it, we will be sensitive to but we will not be exclusively driven by, which I think is where there has been an element of abuse in the past. We will not be exclusively driven by the need not to risk jobs in those areas. We will be sensitive to that but we are not going to allow businessmen to use that as an excuse for justifying their non-payment..... "If you make us pay we will have to go into liquidation and the economy will lose six jobs". I think that both objectives that surely the hon Member will share which is on the one hand maximise the public revenue so that everyone pays their dues whilst on the other hand not establishing marginal jobs in the economy is a balance that needs to be struck and it is not struck simply by allowing people to get away without paying their rates and without paying their social insurance and without paying their PAYE.

HON A ISOLA:

Mr Speaker, the point that I was making seems quite clearly the opposite of what the Chief Minister is saying. The point that I am making is that if businesses are struggling and one gives them the same opportunity as the business that is not struggling, in other words a healthy business, then the competition will get greater, the healthy business will get further ahead and the unhealthy business will have a bigger problem because it cannot meet the payment on time and therefore not take advantage of the 20 per cent discount. So the marginal jobs that are being referred to will actually be worse

off by bringing this measure into place. What we say is support the businesses that need the support and that is where the word "sensitive" which the Chief Minister referred to earlier has to be addressed. One has to be sensitive to the needs of the businesses in order to ensure that it is not abused, but clearly, to give the support across-the-board and to give a 20 per cent which will create a 25 per cent differential from a paying and a non-paying business is to make the position with the unhealthy businesses worse and not better.

HON CHIEF MINISTER:

I do not agree, the non-paying business presumably will continue not to pay and try to get away with it as they are doing at the moment and the fact that we give those that do pay a 20 per cent discount does not oblige anyone who presently decides not to pay not to do so. It is true that by not paying they do themselves out of the possibility of the discount but the fact that we give the good payers a discount does not compel or coerce anymore, than the law already does, those that do not pay from not paying. I think the hon Member's point is entirely illogical and he may think that we should not be giving assistance to businesses at all through the rates mechanism but unless that is what he is arguing, and of course it is perfectly legitimate to argue that it is his view that the Government should not be delivering help to businesses, to the private sector through the mechanism of rates but unless that is what he is arguing it is impossible for the Government to deliver a discount to some businesses and not the others. What is the Government supposed to do? Analyse and scrutinise the accounts of every business in Gibraltar to decide the extent, if any, to which they are meritorious of receiving the discount? That is simple discrimination on an entirely subjective criteria established by the Government. I doubt that it would be legal and even if it would be legal it would certainly be an enormous administrative burden to target. All those phrases about targeting and businesses who really need it, needs to be assessed on a case by case basis and either one has a system that delivers help on a case by case basis and I doubt whether it would be legal, or one delivers it to everybody on the basis that the Government have decided that it is in the general economic interest of Gibraltar to reduce the cost burden to businesses to free it from some of the present constraints of growth and in the case of marginal businesses to increase the prospects that they will survive whatever difficulty they are presently experiencing. I agree that many of these reductions will not facilitate growth. In the case of many businesses in some sectors, some of these measures, but not the import duty measure which has to be passed on, really are almost

an intensive care unit type of assistance to help the businesses to nurse the business through this period and enable them to emerge rather than that they should fail. So not everybody will benefit from these measures by growing. The businesses that are healthy will be better able to grow, the businesses that are unhealthy are not going to be allowed to grow by this mechanism but they will be better placed to survive their difficulties. I take note that the hon Gentleman would not, if he were in Government, have delivered this measure of assistance to the private sector.

HON J J BOSSANO:

Mr Speaker, we believe that in looking at the 1500 employers that there are in Gibraltar in the private sector, given this information that we have got in other areas, the evidence is that there are a few hundred who are having great difficulty in keeping their head above water and that those few hundred are found, whether we are looking at rates arrears, PAYE arrears, social insurance arrears, that tend to be the same companies with the same problems in the arrears in a number of different areas of payments to the Government and indeed probably in arrears to suppliers from other sectors in the private sector. We do not think it is such a monumental task to home in on these firms that reappear on the lists of arrears and see what is the best way to help them in overcoming the problems that they are facing. In fact, if instead of doing that the Government says, "Well, everybody that pays their rates on time will now get a 20 per cent discount", what follows is that the 92 per cent that pay on time will automatically pay 20 per cent less without an effort. The 8 per cent that are not paying on time will either fall into more arrears with PAYE and social and instead divert their payments to rates so that they can get the 20 per cent discount or in fact they have the ability to pay before and chose not to because that is really the only way they can get the 20 per cent because the legislation requires people to pay their full rates in one quarter and then get a 20 per cent credit in the next quarter. If they do that in the first quarter it means they have the ability to do it and why are they not doing it now?

HON CHIEF MINISTER:

The hon Member assumes that everyone that does not pay their rates does not pay their rates because they cannot afford it. I am not satisfied that that is true. I think that there are many people who do not pay their dues to the Government, firstly because Governments in Gibraltar have historically not been particularly aggressive and this is not just a comment on the hon

Member's Government, I think Governments historically in Gibraltar have not been particularly aggressive in pursuing defaulters and that is why we have introduced that element of incentive even for those that can afford to pay. The incentive of the 20 per cent discount will draw out the people who can afford to pay and simply delay whilst they are allowed to get away with it. The point that the hon Member makes about targeting the assistance, I think it would be entirely unacceptable and that the private sector in Gibraltar would not tolerate a situation where the Government was delivering in effect public subsidies to certain businesses just because they were struggling. In other words, what the hon Member is saying fine the two hundred defaulting businesses and find ways of targeting help to them. Mr speaker, that is creating precisely the unlevel playing field that the hon Member the shadow spokesman for Trade and Industry was speaking about before. How can you say to businesses that are successful "You pay tax at 20 per cent..." for example, and to the unsuccessful businesses say, "We have looked at your accounts and we have decided that you are unsuccessful you need only pay 10 per cent." That in effect is what we would be doing if we were to say to the successful businesses, "You pay rates at 100 per cent, but you Mr X Limited, we have looked at your accounts and I have seen that you are having difficulty and I, the Government, hereby reduce your rates to 80 per cent as opposed to your competitor that might be in the building next to you, he will have to carry on paying 100 per cent." That is a complete distortion of the level playing field which the private sector would simply not tolerate and I believe quite rightly so and I frankly doubt whether it would be lawful in the sense that it would be inequality in the application of taxation to people in the same category of taxes.

HON J J BOSSANO:

Mr Speaker, it is no more difficult or iniquitous or lack of level playing field to identify a sector of the economy that needs help than to do it for the hotel industry where people in other businesses are not going to be given the help that the hotel [Interruption] that is not the difference because I have not said there is one company out of 200 whether the other 199 are profitable and one is not profitable, I am saying that it is possible to identify the causes of the difficulties being faced by 300 or 400 employers in Gibraltar and when one identifies the causes then instead of putting £1.4 million as a reward to people who pay the rates on time, 92 per cent of whom are paying them without the reward, so one is using £1.4 million to do what? One is using £1.4 million to give a discount to people who are paying their rates currently without a discount, to people who

may be making [Interruption] the ones who are struggling presumably are the ones who are having great difficulty in meeting their bills, of those that are paying their bills on time, the Government's view seems to be that there are people who do not pay because they can get away with it, not because they are struggling. And that there are people who do pay even though they are struggling because they do not like to get away with it.

HON CHIEF MINISTER:

Absolutely right.

HON J J BOSSANO:

Obviously the Chief Minister knows better than I do who are the conscientious businessmen and who are not the conscientious businessmen from his contact with them before he was in Government. I am assuming that most businessmen will pay if they are able to pay because their business is prospering and when we looked at the problems of the private sector we did not agree that the whole of the private sector was in serious trouble. We do not see the banks floundering. Somebody must be paying the £12 million of tax on £39 million of profits in our economy which we have had confirmed in questions in this House in the assessments made for 1995/96. The assessments on declared profits, not on the people who have not yet been identified, the ones that have got assessments made on declared profits, we were given a figure of £13 million in the last House and it has now been brought down to £12 million. So it seems to me that if one has a differential which is based not on the individual businessmen but on a category of business or on a sector of industry then nobody can say, "You are doing it unfairly or you are not creating a level playing field". One may be having to do something to, if one likes, correct what some businessmen perceive as an unfair playing field. For example, the fact that one has got a large retail outlet that is able to buy in bulk and get bulk discounts means that the small shopkeeper has got a much higher purchasing cost and a much lower profit margin on a tighter turnover. In that context if we look at the business cost the rates of that small shop may be a much bigger percentage of their operating cost than the rates of a supermarket. That is not giving an advantage to people below a certain size, which many countries in Europe do, they have got special rates for small and medium-sized businesses which one loses after one gets over a certain size because it is considered that small businesses have got the largest wastage rate in terms of survival, lots of new businesses are started every year and lots of them die. What one wants to do is to give the ones that are starting the opportunity to survive and

get bigger and grow. Once they get bigger and grow they do not need that any more. Is not that perhaps consistent with the policy of saying, "In the Europa Business Centre we have a non-commercial rent in the new units that are being built with EU money". That is distorting the level playing field landlords could argue because the Government are entering the property market with subsidised accommodation. It is a perfectly legitimate thing for the Government to subsidise accommodation in order to give a helping hand to the people that are small and struggling and on their own and employing one or two people and there is an awful lot of that in Gibraltar. The percentage of employers in Gibraltar is that there are something like 20 per cent of the employers that are with over 50 employees who generally are the employers that are operating profitably because the moment an employer with over 50 employees is in trouble the first thing they do is sub-contracting and they fall to below 50 employees. The people that are in real trouble are the people that only employ two or three because, at the end of the day, the business does not have the critical mass to be able to operate very profitably, it operates on a narrow margin. It can contract, because you get to the stage where you can only do it with a minimum number of people and below that minimum number you have to shut up. We believe that the Government would have done better to devote this money to helping those that need the help most without using some of it to reward the people who do not need rewarding because they are already doing well in their own business, the business is expanding and they are paying their rates on time. In fact, if it is looked at from a point of view of a pure measure to increase the collection of arrears, from that point of view it is frankly spending quite a lot of money to collect not all that much in the context of the fact that 92 per cent already pay on time.

HON CHIEF MINISTER:

Mr Speaker, the hon Gentleman is not quite capturing the underlying philosophy of this policy. The Government believe that even those parts of the private sector that are presently able to meet their obligations as a taxpayer to the Government are in need of help in order that they can grow and employ more people. Therefore, the criteria is not whether they are able to pay or not, but whether the Government have judged that the cost burden of the private sector should, as far as possible, be reduced, in order to facilitate growth which might otherwise not take place. There are some people, of course, who cannot pay and I think that is the category that the hon Mr Isola was describing but this policy is not designed to help the ones that cannot pay up, well if

you cannot pay, you cannot pay presumably 80 per cent either? This policy is not just cut designed to assist those that are having difficulty in paying. That is not the rationale of this policy but of course what the Leader of the Opposition says is true to this extent. If the Government could identify that category of company that needs a rate discount neither to enable him to pay it nor to enable him to grow, in other words there must be companies in Gibraltar that are paying their rates, because they can, and who can afford to grow even though they are paying their rates. If the Government could identify that theoretically, given that the Government do not want to give up revenue, theoretically it would be desirable to exclude them from benefiting from this assistance. The Government believe that there is a right and a wrong way to do things and the Government believe that it is wrong to exercise discrimination of that sort. The hon Member knows that whenever the Government give a concession unless it is a very targeted concession, and some of them can be, we do not believe that this one can be targeted in the way that the hon Members say, but the less targeted a concession is the more it is likely to benefit people for whom the concession was not intended. Therefore, when the Government reduce the level of taxation or when the Government reduce the cost of electricity, or the cost of water, or fails to increase the cost of electricity or the cost of water, it is benefiting also people who could jolly well afford to pay for their water and their electricity at a higher rate and it is giving tax concessions to people who jolly well do not need it because they have got enough spare cash to have paid that amount of tax. I accept that unless one is able and willing, willing and able in this case, to target rates assistance only to those companies who "need" it, need in inverted commas against the Government policy objectives, then it is bound to benefit companies who do not need it in accordance with those same criteria. That is why I said to the Opposition Member that either the Government could decide that rates was not an appropriate mechanism through which to deliver help to the private sector at all and we did not come to that view, but having come to the view that it was necessary to deliver rates assistance to the private sector through the rates mechanism, we also concluded but we have considered for example, it is interesting that he should have used the example of banks, we had considered excluding commercial premises in certain sectors from this benefit but, on consideration, we concluded that it just was not legalistically defensible to discriminate once we had accepted the matter. The hon Members may disagree as to whether it was possible or not to discriminate. We concluded that it was not appropriate to do so.

HON J J BOSSANO:

Mr Speaker, we are not saying that the help need necessarily have been given through the rates. We had, during Question Time, the issue of giving wage subsidies to employers in the private sector who take on people from the unemployment list and the response from the Government was, "We do not want to subsidise the private sector". I would have thought there was a stronger correlation between a wage subsidy which can only be triggered if somebody is employed and a reduction in rates which can finish up either in reducing a loss or in increasing the profit margin. It does not seem to me that there is anything here that the Government can subsequently use to say to themselves, "As a result of the 20 per cent reduction the businesses have expanded by X and employed so many people". It is just a question of a hope that this will produce such a result, but there cannot be any scientific correlation whether as in fact in the case of the wage subsidy it is unquestionable - no employee no wage subsidy. We are not saying it needs to have been done through the mechanism of the rates. At the end of the day if a business has got a range of operating costs which are unavoidable, if they get assistance to meet those costs, then that assistance can be given towards the payment of those costs from the Government and it need not be exclusively through a reduction for prompt payment on rates. As far as we are concerned, we see this not as a way of bringing about expansion of the private sector or increased employment in the private sector but as a way of rewarding prompt payment and since those who do not pay in time are a relatively small percentage of the total, it seems that the ones that are going to be prompt payments as a result of the discount are the ones that could afford which the Chief Minister says there are some of those, we will be able to identify them because they will be the ones that get the 20 per cent. The poor guys who genuinely wanted to pay but genuinely could not afford it will still not be able to pay, still not be able to afford it and therefore that sector is still not being helped and I think they need help.

Question put. The House voted.

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

The Hon J J Netto
The Hon R R Rhoda
The Hon T J Bristow

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

Absent from the Chamber: The Hon J Gabay

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

Question put. Agreed to.

The House recessed at 1.00 pm.

The House resumed at 3.03 pm.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

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

The Deep Sea Mining (Licensing) Bill
The Recognition of Professional Qualifications Bill
The Traffic Ordinance (Amendment) Bill 1997
The Supreme Court (Amendment) Bill 1997
The Civil Jurisdiction and Judgments Ordinance 1993 (Amendment) Bill 1997
The Gibraltar Savings Bank (Amendment) Bill 1997
The Public Health (Amendment) Bill 1997

THE DEEP SEA MINING (LICENSING) BILL

Clauses 1 to 17, the Schedule and the Long Title were agreed to and stood part of the Bill.

THE RECOGNITION OF PROFESSIONAL QUALIFICATIONS BILL

Clauses 1 to 44, Schedules 1 to 8 and the Long Title were agreed to and stood part of the Bill.

THE TRAFFIC ORDINANCE (AMENDMENT) BILL 1997

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

THE SUPREME COURT (AMENDMENT) BILL 1997

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

THE CIVIL JURISDICTION AND JUDGMENTS ORDINANCE 1993 (AMENDMENT) BILL 1997

Clauses 1 to 3 and the Long Title were agreed to and stood part of the Bill.

THE GIBRALTAR SAVINGS BANK (AMENDMENT) BILL 1997

Clauses 1 and 2 and 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 J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon R R Rhoda
The Hon T J Bristow

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

Absent from the Chamber: The Hon J Gabay

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

THE PUBLIC HEALTH (AMENDMENT) BILL 1997

Clauses 1 to 3 were agreed to and stood part of the Bill.

Clause 4

HON A ISOLA:

We have an amendment to make to clause 4 which relates to the deletion on lines 1 and 2 of the words, "in respect of non-domestic hereditaments". The reason for the proposed amendment is because we view the proposed effects of this Bill as a discount on prompt payment of rates and therefore if there is to be a discount on the prompt payment of rates for commercial premises, a similar discount should apply for domestic rents. In terms of the financial impact, as the Chief Minister has already said, the rates from domestic premises are very much greater than domestic premises and therefore the difference should not be too much and it would have both domestic and non-domestic rates having the same benefit of a discount for prompt payment.

HON CHIEF MINISTER:

It is a little bit far from the next general election for hon Members to start offering generosity to the electorate. The proposed amendment is completely out of keeping with the philosophy and objective of the Bill. We do not accept that it is simply a discount for prompt payment. It is an incentive, amongst other incentives and measures the Government have taken in other areas. What the Government have done in relation to rates cannot be seen in isolation, it has to be seen as part of a broad measure of packages aimed at supporting and encouraging the growth of the private sector. There is the rents reduction, there is the import duty restructure, there is an hotel assistance scheme, there is the shortly to be announced commencement of the Small Business Board and this is just one in that line of measures specifically targeted at existing business to grow. All Members of the House have, of late, agreed that the private sector is the future motor of the economy and for the hon Members to fail to recognise that this is part of a package of measures in that order of things is in my respectful view simply too churlish. The hon Member's proposed amendment is an opportunistic attempt to suggest something which he feels will be popular amongst a large part of the electorate. It has no merit beyond that purely populist appeal and for that reason the Government will not accept his amendment.

HON J J BOSSANO:

Speaking on the amendment, we abstained in the Second Reading of the Bill because as far as we were concerned we could not agree to the reduction in rates. Indeed, the figures that were given as to the pattern of the

rates, only confirmed our view that there is no correlation between helping the businesses to expand, that are capable of expanding, or helping the businesses to survive that need assistance to survive on this particular measure. It seems to us that a measure that requires prompt payment in order to merit a discount is above all else a measure that rewards the people that pay their rates on time and since we see no effect other than that, we do not see in fact that there is any more or less likelihood that businesses will expand their activity particularly since many businesses can expand activities without increasing their space. I do not know why the Chief Minister thinks that we now all agree that the private sector is the one that has to generate wealth. That has been obvious to everybody in Gibraltar since the MOD started pulling out. There is nothing else. In fact, our concern has been in the past to ensure that the resources that are dedicated in the public sector do not compete by putting demands on the labour market so that people in the private sector are able to recruit without being in a position of competing with the public sector. Until recently that has not been the case. It remains to be seen when we get Employment Surveys in the future where the Gibraltarians finish up working. In any case we really believe that the use of instruments like the support of the ETB for the employment of Gibraltarians is a more effective way of using funds and there are funds that are obviously going to be underspent from the answers we got to the questions earlier. In that context we think that this measure can only be seen and it is a perfectly valid thing, it is, in effect, the converse of what was previously done originally prior to 1988 by the AACR administration and then subsequently in 1989 by my administration in putting a penalty for late payment but nobody was suggesting that the penalty had anything other than to reward those who paid on time and provide a disincentive to those who did not. I think the effect of the 20 per cent will have that effect and no other effect. If it improves the cash flow of the business, which it is bound to do after the second quarter, then there is nothing to say that the businesses that find themselves with a better cash flow position will use them to expand the business or to reduce prices or to increase profits. No doubt they will take a decision on which of the three alternatives they take based on a commercial judgement of what is in the best interest of the particular enterprise which is not necessarily what is in the best interests of the economy as a whole or of the objectives of the Government. Therefore in the light of our own assessment of what the measure does we think that if the measure is going to reward the people who pay on time, it should reward the domestic ratepayers as well as the commercial ratepayers particularly when we have been told that most of the

arrears in fact are in the commercial sector. I support the amendment.

HON P C MONTEGRIFFO:

Mr Chairman, obviously the Government analysis is not shared by the Opposition. The only point I want to add is that in fact the concept of using rates or the concept of rates in the level of rates in promoting development and therefore having an impact on the viability of development and expanding business is not an entirely novel concept. The concept of Development Aid which is a concept that was introduced by previous Governments and which the Leader of the Opposition's Government supported includes in the structure of Development Aid, indeed a provision whereby both commercial and domestic lessees are given rates relief but the rationale behind that is not actually to give a present to the eventual lessees but because a reduction of rates, which is effectively what the rates relief amounts to, is seen as a valuable element in promoting and in making more viable a development. In the Government's judgement costs of business in Gibraltar are high, we know that. They are high in comparative terms to the immediate hinterland, they are high because we generate all our utilities, they are high because we suffer from lack of economy of scale in very many things that Gibraltar does, in some of those things we cannot do anything about, the problems that we have. Gibraltar will remain an expensive jurisdiction in terms of water and electricity and telecommunications. What the Government are trying to do with this package of measures is to ameliorate the high costs of these in Gibraltar to the extent to which it is possible and making a judgement on whether they will be replicated in a more competitive environment for business. It is a matter of judgement. It only goes some extent of the way. Other costs in Gibraltar remain high and the only way of making up the costs element that we have is for it to become more productive and to become better at what we do but the Government have recognised, since before the Election, that some of the costs of doing business in Gibraltar are high and an effort should be made to reduce them and this is but one part of that overall package.

HON A ISOLA:

Mr Chairman, all I will say is that obviously we regret the stand taken by Government. The payment of rates in commercial or domestic premises has always been treated the same except in its calculations, obviously a differential drawn in the calculation of domestic rate and commercial rates. Other than that, the penalty is the same, the treatment in Development Aid is exactly the

same and they are kept in tandem. This is the first time where payment of rates or non-payment of rates in terms of prompt payment will bring a differential between what the ratepayer pays and it is for that reason only that the amendment proposed has been brought forward to maintain the balance and not to discriminate between domestic or commercial premises.

HON CHIEF MINISTER:

Does he not recognise that commercial rates have in the past been lower than non-commercial rates. There has never been equality of rates between commercial and non-commercial, does he not recognise that?

HON A ISOLA:

Mr Chairman, my understanding of the rates is that the poundage is 60p in the pound of the net annual value. The calculation of the NAV differs obviously between commercial and residential accommodation, that is the difference but other than that the poundage is the same. All that we are saying is apply the same discount for prompt payment. We understand the arguments that have been put by Government as to this being one of the package of measures designed to reduce the cost to businesses but in this one very small part where the domestic household makes its contribution also we feel that the domestic household should also have the benefit of what is a very small discount bearing in mind the amount of rates collected on domestic premises.

Question put.

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

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

Absent from the Chamber: The Hon J Gabay

The amendment was defeated.

Clause 4 stood part of the Bill.

Clauses 5 to 7 and the Long Title were agreed to and stood part of the Bill.

THIRD READING

HON ATTORNEY-GENERAL:

I have the honour to report that the Deep Sea Mining (Licensing) Bill; the Recognition of Professional Qualifications Bill; the Traffic Ordinance (Amendment) Bill 1997; the Supreme Court (Amendment) Bill 1997; the Civil Jurisdiction and Judgments Ordinance 1993 (Amendment) Bill 1997; the Gibraltar Savings Bank (Amendment) Bill 1997; and the Public Health (Amendment) Bill 1997, have been considered in Committee and agreed to without amendments. I now move that they be read a third time and passed.

Question put.

(1) The Deep Sea Mining (Licensing) Bill; the Recognition of Professional Qualifications Bill; the Traffic Ordinance (Amendment) Bill 1997; the Supreme Court (Amendment) Bill 1997; and the Civil Jurisdiction and Judgments Ordinance 1993 (Amendment) Bill 1997 were agreed to and passed.

(2) The Gibraltar Savings Bank (Amendment) Bill 1997:

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

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

Absent from the Chamber: The Hon J Gabay

The Bill was read a third time and passed.

(3) The Public Health (Amendment) Bill 1997:

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

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

Absent from the Chamber: The Hon J Gabay

The Bill was read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

Mr Speaker, I have the honour to move that this House do now adjourn to Monday 20th October 1997 at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 3.27 pm on Monday 6th October 1997.

MONDAY 20TH OCTOBER 1997

The House resumed at 10.00 am.

PRESENT:

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

GOVERNMENT:

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

OPPOSITION:

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

IN ATTENDANCE:

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

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) The Import Duty (Franchise) (Amendment) Regulations, 1997 - Legal Notice No. 98 of 1997.
- (2) The Import Duty (Integrated Tariff) (Amendment) Regulations, 1997 - Legal Notice No. 99 of 1997.
- (3) The Import Duty (Franchise) (Amendment) (No. 3) Regulations, 1997 - Legal Notice No. 105 of 1997.
- (4) The Import Duty (Integrated Tariff) (Amendment) (No.3) Regulations, 1997 - Legal Notice No. 106 of 1997.
- (5) Statement of Consolidated Fund Reallocations approved by the Financial and Development Secretary (No. 1 of 1997/98).
- (6) Statement of Improvement and Development Fund Reallocations approved by the Financial and Development Secretary (No. 1 of 1997/98).

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

SUSPENSION OF STANDING ORDERS

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

Question put. Agreed to.

THE TOBACCO ORDINANCE 1997

HON CHIEF MINISTER

I have the honour to move that a Bill for an Ordinance to regulate the licensing, sale, storage and transportation of tobacco in Gibraltar and for purposes connected therewith 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 Bill seeks to achieve three policy objectives of the Government. Firstly, to remove the quota system which presently affects the supply of American tobacco on the market place whilst at

the same time continue to regulate the tobacco trade. This new Bill prevents tobacco reaching our shores in particular boats in a form and in a quantity which are usable for smuggling purposes. The Bill introduces measures which, whilst they are intended to be, and obviously the Government believes them to be effective in order to regulate the tobacco smuggling activities, nevertheless has the advantage over the quota system that it removes those restrictions that the quota system presently imposes on the bona fide domestic tourist trade. The quota system, whilst it was initially effective to prevent unlimited quantities of tobacco reaching the market place has not been entirely effective in preventing stocks of cigarettes from being accumulated and then creating supplies for the boats. Therefore the emphasis of this new legislation is a way of trying to control the volumes of tobacco that there are available on the market, in the domestic market, and transferring the emphasis to physical measures of control to prevent the tobacco getting into the wrong hands, in the wrong place and in the wrong form. The inevitable consequence of these measures, but to a lesser extent I would argue, than the quota system, is that legitimate bona fide tradesmen have to put up with a degree of regulation and control which may not be necessary in countries where there is not a smuggling problem. These measures follow a period of consultation with affected entities and other bodies, there has obviously been consultation with the Chamber of Commerce. Through the Chamber of Commerce there have been many representations from people in the trade, many of those have been taken on board and indeed have enabled the Government to perfect the Bill and the Government is grateful to them for that. The Police has been consulted, the Customs have been consulted, as the two bodies that would be charged with policing this legislation.

Mr Speaker, the principal measures contained in the Bill are, firstly, the creation of a system to regulate and license, separately, the wholesaling and the retailing of tobacco generally. In so far as a wholesale and a retail licensing regime is concerned, the Bill covers all tobacco products as opposed to many of the subsequent restrictive regime that is contained in the Bill and which do not extend generally to tobacco products. In so far as the regime to create the provisions that create a licensing of retailing and wholesaling is concerned, it creates a regime for the whole of the tobacco sector and to that extent, replaces the existing provisions in existing legislation. Wholesalers will need a wholesale licence, retailers will need a retail licence. Licences are issued under the discretion and by the Collector of Customs and they will not be transferable. The purpose of making them not transferable is that we have the

ability to ensure that licences do not fall into the hands on transfer of people that might not otherwise have been given one had they applied themselves. Retailers will not be allowed to sell more than 1,000 cigarettes to any particular customer at any particular time and importantly, from the point of achieving the ultimate objective of the Bill, which is only to ensure that what little tobacco smuggling activity in boats there is left is suppressed and that we should not incur in the danger of it resurging again. It will not be lawful for retailers or wholesalers to sell tobacco in boxes, that is to say in the brown cardboard boxes in which they arrive in Gibraltar from the manufacturer. Cigarettes will have to be sold by retailers only, either in individual packs of 20 and then somebody said, "Look some cigarettes are sold in packs of 25." I had not realised that but anyway it is there now in 25 or cartons of 200 or 250 because some cigarettes are sold in cartons of 250. The principal feature of the Bill in terms of controlling who can sell and to whom, is that retailers can only sell to retail customers and in retail quantities. They cannot sell in boxes. They can only sell 1,000 cigarettes to each individual at any given time and have to dispense those cigarettes either in loose packs or in loose cartons. Therefore, shops will no longer be able to be the source of boxes of cigarettes that can be thrown into the back of a car and rushed to a beach. Wholesalers can only sell to retailers. Wholesalers cannot sell to members of the public. They can only sell to wholesalers of a retail licence and, in addition to holders of a retail licence, they can sell to bona fide visiting yachtsmen, to merchant shipping, to visiting aeroplanes and people of that kind. There is no restriction on that legitimate business for wholesalers.

The new Ordinance also imposes the requirement, which in a sense is similar to the present requirement, that all importations and exportations of tobacco require an import or export licence to be obtained from the Collector of Customs but import licences for tobacco may only be given to holders of wholesale licences. The first tier of the regime established by the legislation is to licence and regulate the importation and then to licence and regulate who may sell to whom and in what circumstances through the establishment of a wholesale and retail licensing regime. One of the principal handicaps that the Police and Customs face, when it comes to preventing the remnant of fast boat smuggling of tobacco, and let us be clear, there are no fast launches based in and operating from Gibraltar smuggling tobacco or anything else but of course the problem is that there are launches, "pateras" and some other types of boats based in beaches in nearby Spain who come over and are then supplied from shore by people based in Gibraltar.

The Government are keen that that should be eliminated as well so that there is no possibility of come-back for Gibraltar in that area. Therefore, the big handicap that the law enforcement agencies in Gibraltar have in that respect is the storage of tobacco in smuggleable form and in smuggleable quantities, that is to say, in boxes, in premises near a beach or near a wharf. For example, it is said that there are many store rooms in Catalan Bay full of tobacco and in other parts of Gibraltar so that when these boats from Spain come to our shores, boxes get produced from just a couple of hundred yards, very often less than a couple of hundred yards away from the waterfront and there is not enough time for the law enforcement agencies. Literally, these boats can come from the beach next door, be off Catalan Bay beach in a matter of a minute, the tobacco can be brought down to the beach to those boats in a matter of another minute and they can be back in Spain in another minute. Three minutes is just not long enough for the Gibraltar Police or Customs to be able to react.

There is therefore the second tier in this Bill. It is that the storage of more than what is the defined commercial quantity of cigarettes, which is 2,000 cigarettes or more, may not be stored in any premises other than commercial premises covered by a retail or wholesale licence. It will be unlawful for people to store cigarettes in a commercial quantity in their homes or in any premises which is not covered by a wholesale or a retail licence. This will enable the Police and the Customs to take action against the owners and occupiers of premises which are used to hoard supplies for the purposes of supplying smugglers' boats. The other opportunity, and I ask hon Members to bear in mind that I said at the beginning that the difference in the philosophy of this legislation to the previous regime in place, is that the previous regime sought to deal with the problem by limiting the amount of tobacco on the market thus hoping that what stocks there were would be used for the domestic sector and that there would not be enough to trickle down into the smugglers' hands.

This is a different approach, this is trying to prevent the physical aspects of the smuggling and therefore there is a need to have measures which create offences and therefore give the Police and the Customs the opportunity to intervene at every possible stage of the physical smuggling process. One essential stage of the physical smuggling process is transportation. Tobacco needs to be transported from where it can lawfully be stored, from where it can effectively be physically smuggled and therefore by restricting the ability to transport tobacco in commercial quantities, except in those circumstances in which the bona fide tradesman would want to transport

tobacco, creates a useful further opportunity to affect this whole business. Therefore, the new Bill contains a regime that will require tobacco in commercial quantities, that is to say, more than 2,000, to be transported within Gibraltar only in vehicles that are specifically licensed for the purpose. Such licences will only be issued to vehicles operated by licensed retailers or to vehicles operated by licensed wholesalers or to vehicles operated by bona fide transport contractors. Therefore, it will no longer be possible for smugglers to use their own vehicles. It will be possible, but there will be an offence for which they can be arrested. It will no longer be possible for the smugglers to use their own private vehicles for these purposes. There are provisions in the Bill requiring wholesalers in particular to create detailed records of retailers that they supply so that the Collector of Customs can keep a record of the movement of tobacco within the local marketplace. The Bill creates for hefty and, in some cases, severe penalties. This is a piece of legislation, which although as a necessary side effect of its efficiency, of its efficacy, regulates legitimate bona fide trade, but that is not the objective. The objective is to deter the smuggler and therefore it is correct in the Government's view that the penalties should be stiff, that the penalties themselves should act as a deterrent and that the safety mechanism that the Government have chosen to put in place so that the hefty penalties should not be incurred by persons who inadvertently fall foul of these provisions or who fall foul of these provisions whilst they go about their bona fide business with no intention or desire to smuggle or to facilitate smuggling is that no prosecution under this Ordinance is possible without the consent of the Attorney-General in person so that the Police themselves would not be able to make a prosecution decision which could result in mandatory forfeiture or which could result in mandatory minimum fine of a heavy nature. There is there a mechanism, a residual sieve to make sure that this Bill in terms of how it is prosecuted catches only the sins that it is intended to catch. It is a complicated piece of legislation in terms of trying to block the loopholes, in blocking loopholes for smugglers one begins to run the risk of also catching people that one does not intend to catch and that is the mechanism that we have introduced into the Bill in an attempt to ensure that this Bill does not result in the prosecution of people unless they have committed, or unless they are suspected of having committed, this is a matter for the jury, but unless the prosecuting authority which is the Attorney-General in Gibraltar personally considers that the facts of the case indicate a connection with the objective of the Bill which is tobacco smuggling.

Mr Speaker, there are measures in the Bill which are unusual in Gibraltar, not so much unusual in England now, but I think it is probably the first, well not necessarily the first but I think there were similar measures in the Drug Trafficking Ordinances but there are provisions in this Bill, which have the effect of reversing the traditional burden of proof which is that the prosecution have to prove everything and the defence need prove nothing. There is, as some Opposition Members will know, a tendency in the United Kingdom in certain types of offences to reverse that burden when, firstly, there is a particular social problem or specific problem that needs to be addressed which justifies that sort of departure from the tradition and secondly when the departure is in circumstances where it is unlikely to affect innocent individuals and therefore most of the issues, and they are specifically listed, in which the evidential burden of proof is reversed and they are listed there, most of the items on the list are matters of record or form of fact. Does Joe Blogg have a licence or not? Is this American tobacco or is this cigarette or not? Has this particular stock of cigarettes paid duty or not? Were the people involved within the port areas defined in the law or not? It does not mean that the prosecution's assertion makes the matter proved. It simply means that if the prosecution say, "You were within the port area", the defence still has the opportunity to disprove it. It is not as if something becomes proved simply because the prosecution asserts it, but it is reversing that proof. Once a certificate is issued to the effect of one of these formal facts the onus is then on the defence to disprove it. There is also a section which protects law enforcement, mainly Customs, but also the Police, and this is a provision that we have cribbed from similar legislation, Customs legislation in the United Kingdom and that is, that provided a court is satisfied, and the judgement here is the courts, not the Customs Officer or not the Police, that provided a court is satisfied and is willing to certify that they are satisfied, that the Police or Customs Office that detains a boat, or a car used in smuggling tobacco they suspect is used in smuggling, that provided eventually, even though there may be an acquittal on the trial, provided the trial Judge is willing to certify that even though there has been an acquittal it was reasonable at the outset of the matter for the Police or Customs Officers to have suspected the commission of an offence under this Ordinance and provided the Judge so certifies, then both the Customs Officer or the Police Officer at a personal level, that the Crown, in its corporate sense, is exempted from actions for damages for wrongful detention. Where that not the case the efficacy of this piece of legislation would be severely prejudiced because Police and Customs

Officers would have too high a threshold of certainty before they could detain vehicles and goods prior to trial and therefore this is an important enforcement tool. Of course, it is a different question if there should be damage to goods whilst they are being detained, that is a different matter but damages flowing from the mere act of detention is the subject matter of an exemption, as I say, provided that the trial Judge is willing to certify that it was reasonable to have made the detention of the goods or the vehicle engaged in the first place.

The Bill, Mr Speaker, contains repealing provisions in respect of some of the aspects of the matter which is already provided for in other legislation and it provides for transitional provisions because there is a need for a licensing procedure, not just in relation to retail and wholesaling of sales but in respect of transportation and things of that kind and therefore the Bill speaks of three months. The only part of the Bill, the part of the offence created by the Bill which becomes a live offence as soon as the Bill is commenced, is the prohibition against storage of cigarettes in commercial quantities unless the premises are covered by a wholesale or a retail licence. All the others come into effect three months from the commencement date of the Bill and the repealing provisions will not be commenced until this Ordinance becomes live. The existing regime will continue in operation until the administrative arrangements are ready and in the next week or two we will be publishing subsidiary legislation, publishing the fees that will have to be paid, publishing the forms that will have to be used for applying for the various licences and indeed setting out the form of the licences themselves and the text and language of the licences themselves that will be issued. Mr Speaker, I think I have covered most of the provisions of the Bill. 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, Opposition Members share the principal objective or the intention of the Bill but have some concerns, more at practical level, as to the possibilities that may arise. The Chief Minister has said himself, it is a complicated piece of legislation and there will be difficulties that may arise I assume in the transitional first three month period when he will see, as the applications come in, the difficulties that that may bring and subsequent to that in its actual implementation after the transitional period. The regime

that was, as the Chief Minister described previously with the quota system, we felt was effective because it limited at source the amounts that could be distributed. It may well be that in the future, regulations may be brought into effect within this very Ordinance itself which could bring back, if need be, a similar system of restriction on wholesalers as to what amounts they may be able to sell, the reason for that being that whereas in the previous system there was a limited amount of tobacco that could be sold and therefore no matter what the demands the very amount was restricted and held back, the present system releases that and brings the control down to the people that are actually handling, the wholesalers and the retailers. Therefore, the difficulty or rather the policing to an extent was simplified in the sense that if one restricts the source the element of policing that is required below that is lessened to that extent. The other area of concern is that this is the first time that legislation has been brought into effect in such terms to restrain trade of any particular item and the reasons for it are obvious. However, the difficulties that this could bring in the future and I said at the beginning of my intervention that it is something that cannot be monitored, it is a new piece of legislation and a complicated piece of legislation, that we do not fall. I am not suggesting that we do but to ensure that we do not fall at some stage where suggestions are made from those who would seek that there is a trade in another line which could be smuggled in one way or another out of Gibraltar and lead to calls that a similar piece of legislation such as the one that we are going to be passing today should be brought in for that. That is one danger that we see because it seems that whenever Gibraltar becomes competitive in any item, be it in financial services or in trade, people will seek to restrain that. The second problem that may arise is one of in the event of somebody actually managing to find a way of breaching these conditions and we would have to see how they work when the time comes, there is nothing we can predict, we hope they will work but in the event of somebody breaching these conditions, allegations could be made from those same quarters that are seeking to undermine our position that in fact if a car was to pass the frontier with an excessive or commercial quantity available or allowable under this legislation, allegations that we are not enforcing the legislation properly.

I am not going to get into specific details of the different parts of the legislation, but one item that does spring to mind is the question of forfeiture. It seems that by putting the burden of deciding whether the forfeiture should be mandatory or not, is very general, and perhaps places significant responsibility on his

shoulders and one which I would have thought might, and I am not suggesting for a second that it is ill-placed but might have been better placed on the court itself. Obviously there must be reasons as to why the Government have decided that it would be best to place it on an application to the Attorney-General and not on the Judge of the Supreme Court himself. We will, as I said at the outset, have to wait and see how the legislation works. It is complicated, we have not had anything like this before and it will spring up difficulties. The overriding concern that we have is this question of the limited or unlimited availability of the product clearly by restricting the people that can move the tobacco, be it in vehicles, in retail or in wholesale, and again restricting the ability of people to import other than wholesalers. There is an effort being made to control that obviously but our concern stems from the fact that our view was, in this very complicated area of control, that the quota system did achieve that and it has since that time been successful to that extent because if it had not been successful obviously Government would have moved much swifter, at a much earlier stage to bring in controls if it was not working. Thank you, Mr Speaker.

HON CHIEF MINISTER:

Mr Speaker, I hear the observations and views of the Opposition Member. Certainly the Government are aware that there may be things to be learned in the application of this during the transitional period and indeed during the early lifetime of this legislation and of course the Government are going to keep a very close eye on the situation in order to introduce swiftly whatever changes may be required to close loopholes which are rendering the legislation ineffective. This is intended to be a tough regime against smugglers. We remain quite open to the possibility that it may be necessary to make it even tougher if experience shows that that is necessary in order to suppress the smuggling of tobacco from Gibraltar in boats but also if we find that there are elements of the Bill which are unnecessarily restrictive on the bona fide domestic tradesman and which are not strictly necessary to achieve the principal objective of the Bill. We will of course remain equally vigilant to ensure that should that occur we will relax the legislation in such areas as that might turn out to be the case. The hon Member says that the quota system was effective. The quota system may have been effective to reduce the size of the problem from the completely unacceptable, in terms of amounts, from uncontrolled smuggling to limited smuggling but as far as this Government are concerned not even reduced limited amounts of sea-born tobacco smuggling is acceptable and the quota system is simply too blunt an instrument. One cannot see how much tobacco

was smuggled last week and so next week I shall reduce the amounts that each wholesaler can introduce by three boxes. It is just not capable of that degree of fine tuning that enables any amount of tobacco to reach the beaches because, whatever quota system at whatever level you pitch a quota system, it always enables people to acquire a few boxes a day and at the end of the week, or two, to have accumulated 10 or 15 boxes and then do a smuggling operation with those 10 or 15 boxes. Therefore, it was essential, if we were to move on to the next phase, the fine tuning phase, of trying to eliminate it altogether, it was essential to have a system which goes straight to the crux of the matter which is the people who are actually doing the smuggling. The hon Member, in saying that it worked effectively is no doubt aware of the considerable unhappiness that there is in the industry, in the bona fide and legitimate industry. I can recognise that it has certainly worked effectively for the five privileged quota owners and I can see that the five privileged quota owners have certainly been able to exploit their privilege to enhance their commercial opportunities whilst others paid the commercial price for Gibraltar's need to regulate this business. I consider and indeed underline that the Government's intention in this Bill is not only to have a stricter control of the business but at the same time to free those participants in the industry who are not lucky enough to have been amongst the previous administration's list of the five quota holders but to free the other legitimate participants in this business from those unfair and artificial constraints. The price for the fact that Gibraltar has to have this sort of legislation at all is now shared by everybody as opposed to simply paid by some. The hon Member is right in saying that if it became necessary to superimpose a quota system on this structure of legislation then it would be possible to do so. Our judgement at the moment is that that is unlikely to prove to be necessary but if it did turn out to be necessary we would of course be entirely willing to do that. The hon Member I think made the point too quickly when he said that this transfers the policy burden on to the wholesaler and the retailer. It does not, I agree that it certainly makes them contribute to solving the problem by putting limits on them on who they can sell to, how much tobacco they can sell, in a genuine bona fide retail operation. If the hon Member is a smoker, when was the last time that he went into a tobacconist and bought more than five cartons of cigarettes? No bona fide consumer of cigarettes needs to buy more than five cartons, unless you want to store it up to save yourself going to the tobacconist too frequently. There is just no way that anyone that goes into a shop wanting to buy more than five cartons of cigarettes has any intention other than to somehow participate in a smuggling

operation and similarly any tobacconist that wants to be able to sell more than 1,000 cigarettes to one individual at one given time can only be interested in somehow making commercial advantage out of the buyers' intention to smuggle. Therefore, I think it is a perfectly legitimate level which we have pitched. If anything, too reasonably from a trader's point of view and it would be equally defensible to say that just as it is not necessary for a tobacco smoker to want to buy more than 1,000 cigarettes, it is arguable that that figure could have been 600, three cartons, but we have erred on the side of caution because ultimately there is a second tier of protection which is the fact that tobacco in loose cartons is quite difficult to smuggle. You can try to get across the border with a bag full of 10 loose cartons but for sea-born smuggling the real tier of protection is the fact that wholesalers and retailers cannot supply it in boxes and that is really what makes the delivery of tobacco in a non-smuggleable form at least on boats. I am just going to say, in relation to the previous point, that the burden does not fall just on wholesalers and retailers, it also controls storers and transporters of tobacco of the smuggling fraternity without affecting the legitimate necessity of tobacco traders from their transport requirements and their storage requirements.

The hon Member said, again I think too quickly, that this was the first time that legislation was being introduced to restrain what is in principle a legitimate trade. I do not think that is true, with the greatest of respect to him. The sale of tobacco and liquor has been the subject of legal control and restriction and regulation for many, many, many years. He may not be aware of it, but the previous administration not only regulated what was in principle a bona fide trade, of course, the hon Members when they were in Government and we, when we were in Opposition, used to disagree vehemently as to whether the smuggling of tobacco, whether it was duty free or duty paid, in fast boats at midnight from beaches by X men wearing balaclava helmets, whether that constituted a legitimate trade or not and I suspect that we still have those disagreements but the trade in tobacco has been regulated. For example, the fact that the hon Members, when they were in Government imposed a quota system and limited access to that quota to five traders, well look, that was severe, that does not apply to any commodity in Gibraltar. Does the hon Member know of any other article in Gibraltar which is subject to a quota system and which is subject to a quota system which has to be shared out by five privileged traders? It is not true when the hon Member says that this is the first attempt to impose this sort of restriction on a bona fide trade nor does the hon Member appear to be aware of the fact that most of the trade licences to trade in tobacco that were issued

during the last four or five years, well not perhaps as long as four or five, but certainly the last two or three years, had, as a condition of the trading licence, that it was limited to the sale of one carton per customer. That has not been done in this legislation and therefore it is simply not true for the hon Member to state that this is the first time that there is an attempt to legislate to impose restrictive practices regulation on the sale of a commodity which is legal. That statement simply does not bear even the most superficial scrutiny and analysis. The hon Member says that there is a danger that by regulating this trade that we risk being subject to political pressure from abroad to regulate other trades. When the hon Members imposed a quota system and limited retail licences to 200 cigarettes and limited access to the quota system. I did not stand up from the opposite side of the House and said for example, "Well, what are you going to tell the Spaniards if they ask you to impose the same controls on toilet paper sales?" The suggestion that Gibraltar is now exposed to some political risk of the sort that he has described to which it was not equally exposed by their recognition, I believe that their approach to dealing with tobacco smuggling was not sufficiently robust but there was, in the quota system, a recognition that this was something that had to be brought under control. For the hon Member to say that because I am now asking people not to store tobacco in beaches, that that somehow exposes us now to similar pressure in respect of perfume or watches, when he did not think that we were exposed to the same risk when they tried to control tobacco with quotas, I think he is just simply making a point presumably with a desire to try and introduce political considerations of the sort that worries Gibraltarians that does not exist. Gibraltar regulates many of its trading activities. It has regulated this one for many years and this is a change in the nature of the regulations. The point that the hon Member made, I would not have agreed with it anyway but if this was the first attempt to regulate tobacco then the hon Member, even though we might have disagreed could have made the point that if we regulate tobacco, what are we going to say when the Spaniards ask us to regulate chewing gum? This is not an opportunity for him to say that, because all we are doing here, is changing the detail of the controls and the regulations. We are not imposing regulations for the first time.

The hon Member asked, quite legitimately, because it was an area that certainly occupied our thoughts for a considerable period of time, this question of forfeiture. Should forfeiture result from the court's decision or from the administrations through the Attorney-General's decision. In the first place, let me say that forfeiture does not apply to merchant ships, visiting yachts and

aeroplanes. So there is no prospect of big valuable things that are not clearly intended to be used as articles of smuggling to be caught. Those are exempted. What is liable to forfeiture is smugglers' paraphernalia, including their vehicles, their stocks and their boats. That is subject to forfeiture. Why does the legislation put that on the Attorney-General? Mr Speaker, I think it is legitimate for the legislature to make decisions when there are particular objectives that society wishes to achieve. I think it is for the lawmakers to decide what the level of strictness of the sanction should be within parameters. It is then up to the Judge to decide where to pitch the penalty within those parameters. The hon Member knows that there is a tendency now, even in the United Kingdom, for the legislature when they are dissatisfied with the level of penalties imposed by courts especially, to move towards the concept of minimum sentences. Why is this? Because I suspect that legislatures around the world establish a range of sentences for courts and then become frustrated mainly because society blames, not the courts but the Government for the incidence of rule of law and law and order problems. Therefore, there is the frustration for Government when they see courts simply not using the sanctions that they have available to them as effective a manner as really they could do if they were going to become a useful instrument with all the other institutions in society in eliminating a particular evil that needs eliminating. In this case it is tobacco smuggling but other countries take a similar view of other things which are a particular problem to their societies. By the same token we were not willing to go in the other direction completely. The other possibility would have been, the other extreme from leaving it to the court, would have been to simply make it an automatic consequence following a conviction. So if you are convicted, you shall forfeit. That, I thought, was simply going too far in the other direction. The half-way house was that the Attorney-General, who is independent in his prosecuting authority capacity, he is independent both of the Judiciary and of the executive of the Government of the day and he is a person who has access to the evidence, he is familiar with the circumstances of a particular case and is able to form a judgement about whether a case is such which requires or which justifies forfeiture of a car, forfeiture of a stock of tobacco or forfeiture of a boat. I am happy to acknowledge to the hon Gentleman that both points of view are perfectly legitimate defensibly. The hon Member wishes to defend the proposition that power of forfeiture should only be exercised by a Judge. It is a matter of judgement, it is a matter of opinion, it is an area in which many countries in Europe are beginning to move and therefore the debate is at that sort of stage in which

both points of view can just as easily and just as well be defended. Obviously, it is an aspect that we will also keep under some sort of monitoring to make sure that it does not result in manifest injustices. The whole purpose of placing the decision in the hands of the Attorney-General is that whereas a conviction might be justified, a prosecution might be justified, it does not necessarily follow that the circumstances of every conviction justifies the penal sanction of, for example, forfeiting an expensive vehicle. The decision of the Government is that this is supposed to be a tough deterrent piece of legislation. The mandatory forfeiture provisions are intended to be an important part of that deterrent. We want to hit smugglers as hard as possible including forfeiting their expensive cars and their expensive boats and we make no apology for any tobacco smuggler that may have his paraphernalia forfeited in that sense but we do not want to expose to forfeiture of those articles people who fall foul perhaps because of some technical reason of the legislation and that is where the Attorney-General's discretion comes in.

Mr Speaker, the last point that the hon Member made was, and in a sense I have covered it already, whether this would be an excessive restriction on bona fide trade. Mr Speaker, we hope that it will not be so. It has been carefully thought out to leave as much freedom and restriction and lack of restriction to the bona fide trade whilst at the same time creating an environment in which (a) smugglers are hard put to operate and (b) if they do operate the Police and the Customs have a whole panoply of powers and offences that enables the Police to arrest and intervene much earlier on in the operation than they are able to intervene at the moment. At the moment, mainly the Police can only intervene on the beach, so to speak. I explained, at the beginning of our discussion on this Bill, how that was not enough because it only gave them a window of opportunity to intervene successfully for a few minutes really, whereas now, they can intervene to prevent people from storing tobacco in the first place, they can intervene at the time that people are transporting tobacco in the streets of Gibraltar and things of that kind. So it broadens enormously the window of opportunity for law enforcers to be able to intervene but the restrictions on importation and exportation are not new. Traders will require an import licence and the reality of it is, whereas now it is a matter of law, previously as a matter of administrative practice import licences were only granted to the five privileged, as I call them, the five lucky owners of quotas. In a sense, in terms of importation and exportation, far from imposing new restrictions, we are freeing up, as far as the bona fide trader is concerned, because now anybody that has a wholesale

licence, which will be a category of people much wider than the five privileged quota holders at the moment, will be able to import tobacco into Gibraltar whereas at the moment only the five quota holders are able to import tobacco into Gibraltar. Far from being an additional restriction it is actually a levelling of the playing field without in any sense weakening the effectiveness of the measures against tobacco smugglers.

Question put. The House voted:

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

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

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

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

The Tobacco Bill 1997

The Interpretation and General Clauses Ordinance (Amendment) Bill 1997.

THE TOBACCO BILL 1997

Clause 1

HON J J BOSSANO:

On page 420 where we have, "That the Collector shall not issue a licence to any person who has at any time, been convicted of an offence contrary....." to a whole list of Ordinances. Surely this is something that has never been done before in the laws of Gibraltar. One comes to pass a law here saying, "If you have ever in your life, irrespective of how long ago, and irrespective of the nature of the offence, committed an offence for which you have been convicted and presumably for which you have been punished, you will never be allowed to sell cigarettes from a tobacconist's shelf". Is there a particular overwhelming reason for having to do something like this which seems to me to run contrary to at least the simple rule of natural justice that one cannot expect anybody who committed some offence for which he was punished, say, 20 years ago, to have had the ability to figure out that 20 years later in his life what he did in the past would prevent him from doing something as simple as having a kiosk to sell cigarettes? I could understand that that should be the case for anybody that does it from now on. We do not even know how wide-ranging this is. I have not gone through all these Ordinances to find out what all these offences amount to. It is the one thing that nobody has explained why it is there.

HON CHIEF MINISTER:

Mr Chairman, the reality of the matter is that it is a pity that Gibraltar needs this sort of legislation at all and my aspiration as a Gibraltarian that would like to see Gibraltar not engaged and that it should never have been engaged in activities of this sort is that this legislation should be repealed as soon as possible. Whilst there is a need for this legislation the need extends to preventing certain types of people from having such a degree of involvement with the business that would put them in a position to frustrate the objectives of the legislation. The fact of the matter is that the whole philosophy of this Bill is to exclude from the tobacco trade people that in the past have shown an enthusiasm and an inclination to participate in the physical aspects of the tobacco trade. For example, the hon Member says that he has not examined the list of Ordinances, convictions under which would make one disqualified from holding a licence. They are listed in sub-section (6). Mr Chairman, does the hon Member recognise that if one has been convicted of an offence under the Fast Launches Control Ordinance it is likely to be because that person

has in the recent past shown a willingness and an inclination to participate in the smuggling of tobacco in boats? Does the hon Gentleman think that the granting of a licence to wholesale tobacco or to retail tobacco to such a person is not a threat to the efficacy of a Bill the sole objective of which is to eliminate what little there is left and to make sure that it does not happen again? People that have been convicted under the Drugs (Misuse) Ordinance, under the Drug Trafficking Offences Ordinance, he knows what those Bills are about, he knows what those Ordinances are about. If the hon Gentleman had limited his comments to the Imports and Exports Ordinance, I think a case could be made about whether that throws the net too wide. I think that it is possible to fall foul of the Imports and Exports Ordinance in respect of some matter which has absolutely nothing to do with tobacco smuggling. There is a point there but I think the Government make no apology for the fact that just as we are being tough to exclude the possibility of smuggling operations taking place, we consider that a legitimate part of the measure to deploy in pursuit of successfully achieving that and therefore ensuring that the Ordinance is successful in its objective is to exclude from the industry people who are more likely than others to put it no more strongly than that, who are more likely than others to have a desire to defeat the intentions and objectives of the Bill. Of course, that might include people who have committed offences in the past, who have learnt their lesson and who have perhaps no intention of trying to defeat in the future the objective of the Ordinance. Unfortunately it is not possible to lay down legislative criteria using only future factors and I think it is perfectly legitimate for people to be judged on the basis of their recent performance. I would hope that it may be possible, the hon Member has introduced a phrase "spent conviction", that is in essence what he was describing, the concept of a spent conviction. Once one has been convicted of something and one has paid the fine should one be exposed to any other form of control? I do not think that this falls into that category. There are many licensable activities in which before one is entitled to have a licence somebody has got to be satisfied of one's suitability. Bureau de Change Licence, Liquor Licence, there are any number of activities in Gibraltar where not everybody is entitled to take part in that business because there is a recognition in the law that it is an activity through which people should be made to go through a filtering process before they are allowed to take part in them. This is just an extension to that list.

MR CHAIRMAN:

Are you going to propose an amendment?

HON J J BOSSANO:

No, I am not seeking to amend it, I am asking for an explanation because when we spoke on the general principles of the Bill everything that has been said about the general principles seem to me not to touch on the general principle reflected in this particular section and this is why I have asked for an explanation because I do not think the Chief Minister has addressed the point that I have raised. There is no point in seeking an amendment because the explanation I have been given obviously is that the Government have not overlooked this point but have defended the decision, frankly, setting off from a philosophical stand with which I certainly disagree entirely which is that there are two kinds of human beings. We are fully susceptible to do things that are wrong and do things that are right in our society. I do not think any of us has got the right to put ourselves in a privileged position of passing judgement on others. It is not for us to judge other people and the point that I am making is not that people that are going to be deliberately setting out to undermine the legislation should be given the chance to do it, which is almost how it was turned round. This is not a question of saying, "If you want to have a Banking Licence you must be a fit and proper person". This is not the parallel. This says, one is prohibited from doing something as simple as retailing tobacco, and this can be in a club, in a bar, in a kiosk, irrespective of age, this can be somebody who is not at a stage in life when he is occupied in that and who might, a very long time ago, have committed some offence ever in his life, at any time, against any of these Ordinances. Obviously some of these Ordinances, like the Drugs (Misuse) Ordinance and the Fast Launches (Control) Ordinance and the Drug Trafficking Offences Ordinance 1995 were Ordinances brought in to combat a particular form of illegal activity which we are all committed to seeing disappear in the whole of western Europe as part of the commitment that all legislatures have to remove this kind of crime. We have also heard many times in the past Government Members say, "When people are prevented from engaging in these activities, they must be given an opportunity to be reinserted into society and given a chance to start a new life." This makes it impossible. It prohibits it. It says, "You shall not do it". All I am asking is, it seems to me on the surface, without going back through each Ordinance and find out just how many things could constitute having been convicted of an offence, which could be from something as serious as an

attempt to engaged in drug trafficking and as unacceptable as that on the one hand, although I would submit that even somebody that has been convicted of drug trafficking and paid for it and gone to jail and come out, once they come out we have got to give them the benefit of the doubt that they have learnt their lesson and given them an opportunity to lead a normal life and watch them. And if they break the law then, fine, all that this does is, in my judgement, create an entire category of people and we do not know how big it is. By looking at the letter of the law, by looking at the text, it seems to be potentially, given the fact that there is neither a time limit nor as far as I can understand it an indication of the seriousness of the offence for which one has to be convicted, potentially a lot of people could be caught. I do not know whether such people who are now engaged in selling tobacco by retail would have to have their licence removed as a result of this. I am not sure. If it means that all the people that are already in the business when the law has not applied to them before, presumably if they were to re-apply for their licences their entire lifespan would now have to be examined. I am not sure how one goes about it, presumably somebody will have to go to the court and search everybody's history. That is the only point I am making. I am not trying to make a case for smugglers or a case for crime. All I am saying, as presumably I have a duty to do in this House, is point out something that worries me and I am afraid that the explanation that there are some bad guys who do not deserve ever to be given a chance to be good guys is not one that satisfies me.

HON CHIEF MINISTER:

Mr Chairman, there are plenty of past times to demonstrate that you have stopped being a bad guy and become a good guy other than the one area of business which constitutes an important threat to Gibraltar's interests. Nevertheless, the hon Member is not right when he says, "That such people cannot be engaged in selling the cigarettes". They cannot be the holders of licences themselves but there is nothing to prevent them from being employed by others. They are allowed to stand behind the bar in a club selling cigarettes, what they cannot be is themselves the licence holder. Nevertheless, Mr Chairman, if the hon Members feel that the fact that there is no time restriction on this is unduly onerous, then in relation to most of these Ordinances, I believe that it would not prejudice significantly or at all the efficacy of the objectives of this Bill if we were to impose a conviction spent period of, say, 10 years on the list of Ordinances. I would wish to reserve the right in the future if the hon Member

wishes to move an amendment so that the words "any time" should read "at any time during the last 10 years". I would accept that amendment subject to the following caveat, that in relation to the Drug Trafficking Offences Ordinance and in relation to the Criminal Justice Ordinance, 10 years does not help anybody under the fast launch activities because much of that legislation is barely 10 years old, in fact the original Fast Launches (Control) Ordinance is 1987. One is really only talking about people who were engaged in that, but I think, if the hon Member considers it to be an amendment which satisfies the concern that he is expressing which is outside the area of what I would consider to be the efficacy of this, I would concede to the hon Gentleman that if somebody has not been involved in any of these activities during the last 10 years then it may well be that to say to him that he cannot have a retail licence to sell cigarettes is excessively harsh. If the hon Member wishes to move that amendment the Government would support it.

HON J J BOSSANO:

Frankly we just wanted to make the point and the point has been made for the record and therefore we will see how this works in practice when people start applying for licences and who is affected. No doubt if there are problems with this we will get to hear of them.

Clauses 1 to 28, the Schedule and the Long Title

Question put. The House voted:

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

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

Clauses 1 to 28, the Schedule and the Long Title stood part of the Bill.

THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE
(AMENDMENT) BILL 1997

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

THIRD READING

HON ATTORNEY-GENERAL:

I have the honour to report that the Tobacco Bill 1997, and the Interpretation and General Clauses Ordinance (Amendment) Bill 1997, have been considered in Committee and agreed to without amendments and I now move that they be read a third time and passed.

Question put.

The Tobacco Bill 1997:

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

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

The Bill was read a third time and passed.

The Interpretation and General Clauses Ordinance (Amendment) Bill 1997, was agreed to and passed.

ADJOURNMENT

HON CHIEF MINISTER:

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

Question put. Agreed to.

The adjournment of the House was taken at 11.22 am on Monday 20th October, 1997.