

GIBRALTAR

HOUSE OF ASSEMBLY



HANSARD

11th September, 1998

(adj to 21st September, 13th November,
3rd and 17th December, 1998)

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Twelfth Meeting of the First Session of the Eighth House of Assembly held in the House of Assembly Chamber on Friday 11th September 1998 at 9.30 am.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon P C Montegriffo - Minister for Trade and Industry
The Hon Dr B A Linares - Minister for Education,
Training, Culture and Youth
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 and Buildings
and Works
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 J Isola
The Hon J J Gabay
The Hon R Mor
The Hon J C Perez

ABSENT:

The Hon K Azopardi - Minister for the Environment and
Health

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 24th April, 1998, having been circulated to all hon Members, were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

The Hon the Minister for Trade and Industry laid on the table the Report and audited accounts of the Financial Services Commission for the year ended 31st March 1998.

Ordered to lie.

The Hon the Minister for Employment and Buildings and Works laid on the table the Employment Survey Report - October 1996 and April 1997.

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 1997, together with the Report of the Principal Auditor thereon.
2. Statement of Consolidated Fund Reallocations approved by the Financial and Development Secretary (Nos. 12 to 14 of 1997/98).

Ordered to lie.

ANSWERS TO QUESTIONS

The House recessed at 11.40 am.

The House resumed at 11.55 am.

Answers to Questions continued.

The House recessed at 1.15 pm.

The House resumed at 3.05pm.

Answers to Questions continued.

The House recessed at 5.10 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 21st September 1998 at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 7.35 pm on Friday 11th September 1998.

MONDAY 21st SEPTEMBER 1998

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 QC - Chief Minister
The Hon P C Montegriffo - Minister for Trade and Industry
The Hon Dr B A Linares - Minister for Education,
Training, Culture and Youth
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 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 J Isola
The Hon J 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

The House recessed at 12.45 pm.

The House resumed at 3.00 pm.

Answers to Questions continued.

The House recessed at 5.00 pm.

The House resumed at 5.20 pm.

Answers to Questions continued.

The House recessed at 8.35 pm.

The House resumed at 9.00 pm.

Answers to Questions continued.

BILLS

FIRST AND SECOND READINGS

THE BANKING (GIBRALTAR AND UNITED KINGDOM PASSPORTING) ORDINANCE 1998

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to amend the Banking Ordinance 1992 so as to facilitate the carrying on of deposit-taking businesses by United Kingdom regulated credit institutions in or from within Gibraltar and by Gibraltar regulated credit institutions in the United Kingdom be read a first time.

Question put. Agreed to.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Friday 13th November 1998 at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 1.35 am on Tuesday 22nd September 1998.

FRIDAY 13TH NOVEMBER 1998

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 QC - Chief Minister
The Hon P C Montegriffo - Minister for Trade and Industry
The Hon Dr B A Linares - Minister for Education,
Training, Culture and Youth
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 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 J Isola
The Hon J 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 on the table the Statement of Consolidated Fund Reallocations approved by the Financial and Development Secretary (No. 15 of 1997/98).

Ordered to lie.

MOTION

HON J J NETTO:

Mr Speaker, I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with one Government motion.

Question put. Agreed to.

HON J J NETTO:

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

"This House:

1. takes note of certain unemployment statistics published by the previous GSLP Government;
2. condemns the Opposition for its totally unjustified statements accusing the present Government of distorting and misrepresenting the facts and manipulating the presentation of figures to give a false picture;
3. considers that these remarks in fact actively describe the practices of the GSLP when in Government; and
4. condemns the previous GSLP Government for such practices."

Mr Speaker, over the last few months several of the Opposition Members have made totally baseless, unfounded and unjustified allegations against the Government for giving incorrect information to the House. On the 10th August 1998 the GSLP issued a press release accusing my Colleague the Minister for Tourism and Transport of doing precisely that in answers to questions in this House and in the Tourism Survey Report tabled in this House. Indeed, on the 4th August the GSLP issued a press statement saying that the tourism figures published by my hon Colleague were "pure science fiction and a complete fabrication". The GSLP also pointed out in that press statement that "Ministers are responsible for the accuracy of the information they present to the House of Assembly and indeed to the public".

Mr Speaker, unlike this Government which, as a matter of policy, publishes unemployment statistics as a matter of course, quarterly, the hon Members when in Government did not distinguish themselves for their inclination to publish the information. In fact in eight years of Government the Opposition members only gave unemployment figures on 14 occasions and then always and only because the then Opposition asked for them in questions in this House. Still, Mr Speaker, on the rare occasions that they did provide unemployment figures the hon Members systematically presented false figures and real science fiction to this House.

The hon Members then turned on me, accusing me on the 21st August 1998 of "misleading the public and trying to manipulate" the unemployment figures and of "distorting and misrepresenting the facts to give a false picture". On the 14th July the GSLP accused me of a "deliberate attempt to mislead and give a false picture". Mr Speaker, the irrefutable evidence available here in front of me, the raw unadjusted figure, the head count, which I have brought to this House and for which I will make available to members of the public in order to corroborate that I am saying the truth, clearly shows that the unemployment figures given by Opposition Members when in Government in answer to questions, often did not bear any resemblance to the ETB's record of figures of the same date. Of course, in this respect the ETB records were the only source of unemployment statistics available to the hon Members. For example, in Question 172 of 1992, the then GSD Opposition asked for the Gibraltar unemployment figures as at the 30th June and 30th September 1992. In answer, the then GSLP Minister for Labour and Social Security the Hon Robert Mor said that as at the 30th June there were 217 under 25s unemployed. ETB records show that the true figure was 253. He said that there were 302 over 25s unemployed. ETB records show that the true figure was 320. Mr Mor's total figure, 519; ETB's total figure, 573; overall difference 54 or 10 per cent. As at the 30th September 1992 he said that the under 25s numbered 222; the true figure was 235. He said that the over 25s numbered 298; the true figure according to ETB records was 418. Mr Mor's total figure was 520; ETB total figure 653, a difference of 133 or 20 per cent.

Similarly, in Question 12 of 1993, the then GSD Opposition asked for the Gibraltar unemployment figures as at the 31st December 1992. In respect of under 25s the Hon Mr Mor said that there were 264; the true figure was 275. He said that there were 327 over 25s;

the true figure was 443. Mr Mor's total was 591; the true total according to ETB records was 718, a difference of 127 or 17 per cent.

In Question 117 of 1993 the GSD Opposition asked for the same figures as at March, June and September 1993. In respect of March the Minister for Employment Mr Moss said that there were 254 under 25s; spot on he was. ETB figures show 254. In respect of over 25s he said 334; the true figure according to the ETB records shows 446; difference in the over 25s of 112 or 25 per cent. In respect of June, 268 for under 25s which again coincided with ETB records but in respect of over 25s he gave the figure of 381 whereas ETB records show 486; a discrepancy of 105 or 21 per cent. In respect of September 1993, he gave the figure of 301 for under 25s, whilst ETB records show 319; for over 25s he gave the figure of 351 whereas ETB figures were 536. Mr Moss total 652; ETB records show 855; a difference of 203 or 23 per cent.

Mr Speaker, in Question 22 of 1994 the Opposition asked for the same information, Gibraltar unemployment as at the 31st December 1993 and for the 31st March 1994. The then Minister for Employment the Hon Mr Moss said that as at the 31st December 1993 there were 302 under 25s unemployed; ETB records show that the true figure was not 302 but 342. He said that the figure of over 25s was 368; ETB records show that it was 555. Mr Moss total figure was 670; ETB total was 897, a difference of 227 or 25 per cent.

At this time ETB figures show the total unemployed Gibraltarians of 897, the highest ever in Gibraltar's history. When I quoted this figure recently the Hon Mr Baldachino responded in a press statement issued on the 21st April that "Mr Netto is also wrong as quoting the figure of over 800 unemployed in 1993 since he is comparing the unemployment figure, including Moroccans, with the figure now published which only shows Gibraltarians". What the Hon Mr Baldachino was saying was that the figure of 897 included Moroccans unemployed and that I was wrongly citing it for Gibraltarians only. The Hon Mr Baldachino is incorrect. ETB records show that there were indeed 897 unemployed Gibraltarians as at the 31st December 1993. There were in addition 415 unemployed Moroccans giving a joint total of 1,312. Returning to Question 22 of 1994, the answer for March 1994 and recorded in Hansard, was 298 under 25s when ETB records show 236; for over 25s the answer was 356 when ETB records show only 331. There are several occasions when the answer given in this House overstated the figure

shown in ETB records. This situation arises on the latter part of the GSLP term of office and the answers given by the Hon Mr Baldachino. One can only speculate as to the reasons why the hon Member would wish to do that. What could then explain the fact that the then Government systematically brought to this House information different to what was in the Government own records. Could they have channelled their figures from another source? The answer is that no other source exists. Furthermore, in answer to Question 118 of 1993 the Hon Mr Moss said that "the unemployed figure for Gibraltarians consists of all those who are registered with the ETB as seeking employment". In addition to this, in his public statement of the 16th July 1998 the Hon Mr Baldachino said "the GSLP is not questioning the number of persons registered in any given month which is the head count by the staff of the ETB of those who call at the ETB to seek employment". It is therefore clear that the hon Members pretended that they were giving ETB figures when in fact they gave different figures to those disclosed on ETB records.

Mr Speaker, there is another issue of deliberately misleading the House. In Question 107 of 1995 the Hon Mr Vasquez asked the then Government for Gibraltarian unemployment figures as at the 31st December 1994 and 31st March 1995. The Hon Mr Baldachino gave the figures for 31st December 1994 but he said "the figures for the 31st March 1995 are not yet available". The reality of the matter is that they were available in the ETB records. Indeed, I have the paper that the ETB passed to No. 6 Convent Place with the answer to the draft answers written on it and it contained information for both December 1994 and 31st March 1995. It is therefore clear that the hon Member said that the information was not available to him when in fact not only was it available to him but indeed he had it as it had been drafted for him by the ETB. Mr Speaker, what we have seen today is hypocrisy in its highest manifestation by the GSLP accusing this Government of practices they themselves had adopted as routine habit during their period in office. It is therefore clear to any open-minded person that when the GSLP was in Government it was them and only them that manipulated the presentation of figures to give a false picture. In fact, they continue to do so. For example, in his public statement of the 16th July 1998 the Hon Mr Baldachino said "the facts are that the GSLP brought unemployment down to 331 by April 1996 and that it had been higher than this ever since. He will only be able to claim he had reduced unemployment when it dropped below this figure of 331." I do not know, Mr Speaker,

why and how the Hon Mr Baldachino now subscribes to the figure of 331 at April 1996 when his Party's last Election Manifesto also published in May 1996 in reference to Gibraltarians unemployed stated "we have set ourselves the target of getting this figure down back to the 300 level that existed before 1992. At present the level is under 450".

Mr Speaker, I would like to quote from a man from whom I draw inspiration - "if you once forfeit the confidence of your fellow citizens you can never regain their respect and esteem. It is true that you may fool all of the people some of the time. You can even fool some of the people all of the time but you cannot fool all the people all of the time" - Abraham Lincoln. Or perhaps if hon Members prefer it in modern day language, people in glass houses should not throw stones.

Finally, Mr Speaker, I most energetically condemn the previous GSLP Government for this systematic production and presentation of false information to this House. This constitutes, amongst other things, a most serious contempt of this House. Given such an abysmal record of real manipulation, it is most shameful that the Opposition Members should now adopt concern and preoccupations with the Minister's responsibility to the public for the accuracy of the information given to this House. It smacks of nothing less than cheap and vulgar hypocrisy. I commend the motion to the House.

Question proposed.

HON J L BALDACHINO:

Mr Speaker, let me first clarify the distortion that the Minister has just committed. I never gave the figure of 331 in this House or anywhere else. He did, in the first meeting of the House. He was the one that quoted 331, not me. I never said it anywhere and the reason why my figures were higher than those that he got from the ETB is because we used to include the lapsed people as well. He has not quoted in this House that when I took over the Ministry the figures were lower. He says that they were higher. Of course they were higher because the lapsed people were included. He mentioned our manifesto of the last Election. Well I could have gone to the people and said that there were under 350 unemployed instead of the 450 as the Manifesto says and I could have been right but we thought that it was better to put the lapsed in and therefore give that information. He cannot accuse me of trying to mislead because I have given higher figures.

On the other figures that he has quoted, seeing that he is going to make it public, well we have to look at the records and see where he has gone wrong. Mr Speaker by coming here and putting this motion attacking us on this he cannot get away from the fact that he did not do whatever he did, and he has done it in the past, he has done it and I will prove it to him and therefore whatever he has said in relation to those figures, we have to take it with a pinch of salt. Let me start by saying that in October 1997 the Minister said that he could not give me the figures because I think after questioning him here in this House he said that this was because women were going down to the ETB and registering because they had heard that there were two supermarkets opening and those people were not genuine job seekers. How can the Minister, who has just come back from Brussels and in a question in GBC in an interview when asked if women were discriminated he said that women were discriminated in Gibraltar like anywhere else. He was the first one to discriminate them. Does he not understand that women and especially married women and single parents look for those type of jobs because of the conditioned hours which actually suits them in their private lives or socially? And he wanted to take them away, that is what he said here, that we were looking at a system where we were taking them away so that it would reduce unemployment figures, for no other reason. It is surprising that the Minister who has no time to seek members of the public, has such spare time to take him through old files which appears to be a pastime of his, he does it all the time.

I do not know if he is doing it to boost his political image, seeing that he is held in such low political esteem even within his own party, or could it be a propaganda exercise to hide his incapability to bring Gibraltarian unemployment down. Whatever it is, his true reason for this motion is clear. As recently as the 2nd October in a Government press release No. 161/98, one could ask why was the figure of 79 per cent underlined? Why stress that that was the percentage of local residents filling up the vacancies? Why? Why was it underlined? Because if one underlines something in a press release it is because one wants to draw the attention of the person that is receiving that. Why did he do that? I will tell the House why he did it, because in reality local residents means any nationals that live in Gibraltar including those that require work permits. That is what he means, that of course they reside here, all those under that category. The reality is that since he took office the Gibraltarians filling up jobs is just over 50 per cent, that is the reality, that is what they

were trying to hide in that press release. Why did they not say Gibraltarians filling up jobs in Gibraltar is 53 per cent in that case? Why say 79? Is that not distorting and manipulating the figures to give a wrong impression? He has not defended that.

On 17th April in Government Press Release No. 70/98, the second paragraph states "falling trends during the quarter was as a result of new business coming into Gibraltar...." and gave us the example of Cammell Laird and the Bottling Plant. When asked in this House how many of the March vacancies had been filled at the bottling plant and how many at Cammell Laird the Hon Mr Netto replied that he did not have the information and needed notice of the question. How can the Minister say he did not have the figures when a few days after the press release and prior to the question, a few days only, he had stated it in a press release and his comments in a GBC interview. That is what he said and he told this House he did not have the figures. How then did he know that the downtrend then had been because of the bottling plant and Cammell Laird? But that is not the only thing, Mr Speaker. On the 14th September, having given him almost six months notice, because he said he needed notice at the time, we put the question again. His reply then was that he did not wish to provide the answer in public but would provide it in writing privately and confidentially even though he had used the names of the two employers in a press release and in a GBC interview back in April. On the 15th September in a letter addressed to me and signed by the Minister it stated that none of the vacancies filled in March were at the bottling plant. Was he not distorting the figures and giving a misrepresentation back in April? And he did not answer the second part of the question that we asked him, how many of those were filled by unemployed Gibraltarians? He did not answer that and we are still waiting for the answer from the 15th September. Is that not a misrepresentation and a distortion of facts? What is true and what we know is that of the 10 vacancies open on the 22nd April at Cammell Laird, because he specified it in his letter, they were filled by one Gibraltarian, three Spaniards, three Moroccans, two Portuguese and one British and I suppose all those form part of people who are resident in Gibraltar. That is what I suppose they are and therefore I suppose that the Minister is happy, he should be happy that 79 per cent in the last quarter is going to local residents. I do not know why in the same press release and in all press releases as a matter of fact, the Minister still keeps on urging local employers to employ more local residents. Local

residents, what does he mean? It does not mean Gibraltarians alone, I suppose? If they are happy with that 79 per cent, that 21 per cent is going to frontier workers because if I work out his last figures I do not know who stays out, I suppose it is the frontier workers, about 40 who stay out because they are frontier workers and I suppose they are Spaniards. Everybody else I suppose lives here and the Minister should be happy about that and therefore when he accuses us of being racist I suppose one can accuse him of being a racist because he wants to discriminate frontier workers to other workers who reside here immaterial of nationality because they are happy that people who reside here should find work. Of course, people might come in, the Spaniards might come in, might reside here and then they are happy that they should be employed equally as Gibraltarians.

Mr Speaker, in June the Hon Mr Netto stated that unemployment was down. When this was challenged by us he had no other option that in a second interview in GBC admitting that it was not down, that it was up. Is that not a misrepresentation and distortion of the figures? In the last question in that interview he was asked a specific question "is unemployment up or down?" and he said "up" after having said before that it was down. I do not know what else to call that Mr Speaker, that the Minister comes first and says it is down and then he retracts and he says it is up, to me it must be a misrepresentation of the figures. He is right when he says that we are not questioning the figures, we are questioning his interpretation of the figures. That is what we are questioning. As a matter of fact when he said it was down in June the figures of unemployment of Gibraltarians had actually risen by 34. Therefore, Mr Speaker, we maintain what we have said all along that the Minister has distorted and misrepresented the facts and manipulated the presentation of the figures to give a false picture. Of course, this motion will be passed, not because he is right but because they have a majority in this House. The true fact is that Gibraltarians taking up jobs since he took office is over 50 per cent. When we were in office in the last count it was 68 per cent. He can check that one as well and from these facts he cannot shy away, nor distort, misrepresent or manipulate any of these figures. Therefore, we have maintained what we have said and we will look at those figures because if he is going to make it public obviously we would like to have the right to look at them equally as they did but he cannot come here and put a motion and say the Opposition did that in the expectation that whatever he did and whatever he has done in the last

year he has not done. We cannot accept that. He has done it and I have proved it, it is in press releases, in interviews that he has made and of course I can say that we left him with unemployment of Gibraltarians at 331, short of 300 which was our target and I have never quoted that figure. He was the first one that quoted that figure in this House when I asked him the question and therefore on that one he cannot say that we have distorted those figures because he was the one that gave them, Mr Speaker.

HON CHIEF MINISTER:

Mr Speaker, I think that rarely will such a serious Parliamentary charge have been laid and such an inept defence proffered. I hope that some of his colleagues will now rise and shore up the defence. Anybody listening to this debate might think that this was a debate about employment in Gibraltar. It is not a debate about employment in Gibraltar. This is a debate about the hon Members bringing false information to this House, it does not matter whether it is about employment or about the weather. There is no attempt to explain the basis of this motion and I just do not understand how the hon Mr Baldachino can stand up and say "I have never quoted the figure of 331 anywhere, here or in the press, it is him", that is what he said the first time, the last thing he said which is a bit more accurate is that he quoted it first. Of course he quoted it first because this Government only quotes ETB figures. The point is, how can he say in this House that he has never quoted that figure. Mr Speaker, people in Gibraltar know how to read and people in Gibraltar know what words mean when put one in front or one behind the other. On the 16th July of this year the hon Member put out a press release in which he says "the facts are that as he (Mr Netto) himself now admits, the GSLP brought unemployment down to 331 by April 1996...". The hon Member cannot put out a public statement saying that the Government have now admitted that the GSLP brought the unemployment figure down to 331 if it is not his position that the figure was 331. He might have said "The Hon Mr Netto is a fool to think that I was as successful at my job as he thinks I was in bringing the figure down to 331. In fact he is completely mistaken, I was not that successful, it was only 450". But if the hon Member says in public the facts are that as he now himself admits the GSLP brought unemployment down to 331 by April 1996 and that it has been higher than this ever since and he goes on to say "he will only be able to claim that he had reduced unemployment when it dropped below this figure of 331".

How does the hon Member now dare get up in this House and say that it is only Mr Netto that has quoted the figure of 331 and that he has never quoted it, either here or anywhere else.

Mr Speaker, we still do not have an explanation why the figures in the ETB records which are contained in those computer print outs, the hon Member still has not given an explanation as to why the figures in the ETB records are different to the figures that he and some of his Colleagues brought to this House. He says in passing, as if it were an incidental matter to this debate, and not the central issue, "well, it is because we have included the March figures". Mr Speaker, we do not accept that explanation because the ETB figures already make provision for the lapsed but even if this is wrong, even if we are wrong, which we are not because as I say the ETB figure already made provision for lapsed, Mr Speaker that might explain the rare and the few occasions in which his figures were higher than the ETB's but it does not explain the many more cases in which his figures were lower than the ETB. If he is saying that the ETB figures do not include the lapsed but that the figures that he brought to this House were so honest that they included the lapsed, which the ETB did not, then his figures will always be higher than the ETB and what we are saying is that for many of those months they were lower. He cannot explain away the lower figures, the instances in which his figures were lower than the ETB's. He cannot explain that in the same way as he explains the higher ones. Again, how can he claim that there was that difference between the fact that the ETB figures did not include the lapsed and the fact that his did or his Government, it was not always him that brought the figures to the House. On some occasions the figures were identical. How can they be identical the Government's and the ETB's figures some months and then 20 per cent different the month before and the month after. This suggests that there is just complete casual choice of the figures that are brought to this House. I can imagine that the hon Member much regrets that the Minister had time to delve into his historical records, like so much of what used to happen in the days when the hon Members were in Government. I suppose that they were hoping that no one would look over the papers and expose what they were doing. I regret to say to the hon Member that in this as in many other areas that he is not going to have his wish in that respect. It was not the Minister who delved. The fact of the matter is that there are officials in the ETB whose job it is to delve to make sure that the public get the information of an accuracy to which they are entitled.

Mr Speaker, I do not know if the hon Members have now adjusted the position of their threshold of integrity that whereas before they seemed quite content to bring inaccurate information to the House now they regard as manipulation and distortion and misrepresentation the failure of the Government to answer a question. I am glad that the hon Members have set their standards at such a high level. Better, I suppose, late than never. How does the hon Member dare equate what he has heard this morning with a Minister standing up in the House and in answer to a supplementary question saying "look, you have asked me information about Cammell Laird, I do not have the information here. I need notice of the question." Or do you think that the Ministers come to this House with every statistic? Does he really think that the Minister saying "look, you asked me for information in a supplementary, I have not got it with me, I therefore need notice of a question". Why should it surprise him that two days later he has the information. He would have had the information in the House if it had been the subject matter of his original question. The fact that a Minister does not have information requested in a supplementary question hardly falls into the category of distortion and misrepresentation. Frankly, I hope that the hon Members will have more to say in answer to this motion than this. Therefore, Mr Speaker, if the motion is carried it will not just be because the Government have a majority, it also has to be because as yet we have not heard an explanation for the facts tabled in the House by my hon Colleague.

HON J J BOSSANO:

Mr Speaker, nothing could be more evident in the total hypocrisy of the presentation of this matter in the House than the last remark made by the Chief Minister that the motion might not be passed because it is not a question of Government majority but a question of an explanation. Does he really expect anybody in Gibraltar who is listening to us to believe that irrespective of whatever explanations I give today there is the remotest possibility one out of a million that everybody in the Government benches will vote with the Opposition and against Mr Netto. That is in fact the giveaway that this has nothing to do with statistics and this has nothing to do with employment although one would have thought so given that it is being moved by the Minister responsible for Employment. It has to do with a strategy of manipulation of information which is what has been going on in the House since 1991 when the Chief Minister

arrived as a result of a by-election. Let me say that if the figures that we have been given today were accurate which we do not accept they are, it would mean that between December 1994 and April 1996 we had been successful in reducing unemployment of Gibraltarians from nearly 900 to 331. We do not think we were successful in doing that. Had we been successful in doing that we would have presumably done what the Minister for Labour now does which is to issue press releases saying that it is a huge downtrend because he claims that there was a downtrend in the first six months of 1998 because of the figure of one month having said in this House that one should not judge trends by the figures of one month. That is misrepresentation. If it goes up in one month, one month is not relevant. If it comes down in one month, one month is a downtrend. It is the utilisation of information that we are talking about. Obviously we stand by the answers given in this House to those questions as the level of unemployment that existed in Gibraltar as far as the GSLP was concerned giving the House the accurate information that the House is entitled to have. What we have never done, either in respect of unemployment or in respect of tourism is to pick a figure and claim that this is evidence of our success because, of course, as the Minister has said we did not make a practice of issuing press releases on this or on anything else. We have provided the information when they asked for it in this House. He in fact has not provided a single figure on Moroccan unemployment since he was elected. Why? Is it because he does not care about Moroccan unemployment? No, because we have not asked for it and because we have not asked for it he has not provided it. When did he start providing details of lapsed people, of people entering into employment, of vacancies being filled, did he do it of his own initiative? No, he did it in answer to questions. Why did we not do it? Because they did not ask the question, that is the simple answer. The information that he has provided is the information that has been requested, that is what we have been doing. That is why he has not given a figure of non-Gibraltarian unemployment once since the election of May 1996. Before he used to argue that it was very important to have monthly figures when we used to produce the figures every three months. Now he wanted to move to produce them quarterly and of averages. Of course, from an average of three months there is no way of knowing whether the three months have been the same or whether the first month has been much higher than the second and the third month much lower than the second. He used the explanation when he decided to shift from monthly to quarterly figures that this was because there

had been a sudden influx of people into the Register of Unemployed and that therefore a blip like this could produce a distortion of the picture. We accept that explanation but we do not accept that that can be a blip about people getting jobs or that there can be a blip about vacancies, but he then moved on every single other statistic to a quarterly provision. We have had Ministers in this House not answering questions on unemployment or on numbers in employment because they were not sure of the accuracy of the information they had. When we asked about the number of people getting Unemployment Benefit and the number of people registered with the ETB, we have been given different answers. When we have asked about people employed, if it has been answered by the Minister for Labour we have been given the number of open contracts, if being answered by social insurance records we have been given a different figure and of course if it is a question of the PAYE records one gets a third and a different figure. The Government Members recognise themselves that the statistics that they provide in this House are not in fact as accurate as they could be if it was all centralised and they have said that it is their intention to try and improve on that situation and centralise it. Why is it that the Minister gives figures for 1992 and 1993 and then says nothing about 1995 and 1996? Why? Is it that he has not looked at those years? He has looked at those years, then why is it that he suddenly stopped in 1994? Is it that he cannot make the same case for 1995 and 1996 as he makes for 1992 and 1993? And if they cannot make the same case why? Could it be that the original figures needed to be put right because they were grossly inaccurate and that as they became more accurate with the passage of time he stopped quoting them because it does not suit him? We would, of course, want him to provide us with copies of those printouts for the whole of our four years and of course if the Chief Minister wants to have a more detailed explanation then I suggest what he should do is defer the voting on this motion because of course there is nothing in the motion that we could answer to. We did not know what the motion was about. What statistics he was talking about. If he had given us at the same time as he gave notice of the motion, copies of all that he might have had a more detailed reply about the specific figures for each one of the quarterly reports that he has used so far and the ones that he has not quoted. If we were to believe the Chief Minister, which we do not, that there is a possibility that giving a detailed answer to those figures might get them to vote against the Minister that is moving the motion, then it is impossible for us to give that answer until we have

the material that he is using which, of course, contains the name and addresses of people which he is going to make public which we find peculiar that he should make available to the public the name and address of the people who are on welfare, on supplementary benefits, and unemployed going back to 1992. I am not sure that they have got the right to do that but we certainly have the right to have access to that information given that that is the information on which the criticisms in the motion are based. Of course, it is not normal to be defending oneself against a censure motion when one is in Opposition, it is normal to do it when one is in Government and I think it may well be that the Chief Minister in sanctioning the bringing of this motion to the House realises that he is really in the wrong place, that we ought to be there defending policies and he should be here attacking because he is a prosecutor by inclination and by temperament. That is why he addresses you Mr Speaker sometimes as if we were in a Court of Law and he has prefaced his remarks today by saying he hopes there will be a better defence because as far as he is concerned what is right and what is wrong depends on what one can persuade the jury is right or wrong irrespective of reality. It does not depend on the truth because it is not true, Mr Speaker, that there are £70 million spent in Gibraltar mainly because of people getting off the ferry from Morocco. The fact that the figure is dubious is unimportant, unless one picks that figure as evidence of ones success. If the figure is there and that figure has got the same limitations as many other statistics that we look at and have looked at for many years, both when the GSLP was there now and before the GSLP was there, then if one does not try and drum up euphoria about the success of the policies based on a dubious figure, the Opposition will not question the figure. We will take everything with a pinch of salt which is the normal thing to do. This motion by the Minister for Employment, which has nothing to do with employment we have now found out, is of course irrelevant because the point that the Minister should be defending in this House is the degree to which he has been successful in bringing down unemployment since May 1996, that is what he is paid to be doing here. We reject the accusations, we do not accept that anything has been exposed and we demand to see that information and the information for the remaining years. The Chief Minister says one cannot expect the Minister to answer a question and remember something that happened six months ago. You expect the Opposition to have thousands of names going back to 1992. We did not take anything with us after May, we left all the records behind and all the records that were there

before us. I suppose the Chief Minister feels no need to go beyond 1992 to see what the figures were like before 1992 or to question their accuracy when questions were being asked in this House about unemployment and peculiar figures were being produced.

HON CHIEF MINISTER:

Mr Speaker, the hon Member appears to miss the point. What we are saying is very simple, that the figures that he brought to the House were not the same as the figure of the Government Department responsible for collecting them. This is not about names and addresses of people. He must at least remember why when the ETB sent him a figure that said that the unemployment was 350 before sending the answer to the Clerk of the House, he crossed out 350 and put 176 and even if he cannot remember he must know this is systematic behaviour, he must know what the explanation is for the fact that he did not do what we now do which is bring to the House... The figures come from the ETB and they pass straight from the Ministers to the House. He must at least remember why that did not happen. Nothing to do with names and addresses and remembering a thousand of them.

HON J J BOSSANO:

Mr Speaker, I will not let the Chief Minister get away with that misrepresentation. I have not said I do not remember the names and addresses, what I have said about the names and addresses is that the Minister has announced that they are public and that I questioned whether one can make people's names and addresses public. The figures for 1992 and 1993 and 1994, which presumably are in those print outs we will study to see the discrepancy that he claims exists and we want also to study the 1995 and 1996 because what they have deliberately omitted to say today, deliberately, because it is impossible for the Minister to have started in 1992 and stopped in 1994 and not looked any further, what they have deliberately withheld is the fact that the figures were inaccurate originally and have become more accurate precisely because we were questioning what was being produced and they have done the same in answer to questions in this House. Mr Speaker, they have done the same. We have had questions in this House some months ago about the numbers getting Unemployment Benefit, the numbers getting Supplementary Benefits and the numbers not getting any benefits at all and when the time came for the answer to be provided it was not provided because they were not satisfied with what the Department had

produced so it did not come straight through and it is on record we were not given the answer and that was the explanation given. We did not challenge that explanation. If in fact when the information on tourist expenditure was produced if the Minister for Tourism had looked at that figure of numbers coming from Morocco and said to himself there seems to be something strange about these figures and had then rechecked and redone and changed to give a better and more accurate picture than the raw data with which he had been provided, we would not have criticised him because we would have thought was what he has trying to do was to make sure that the figure reflected the position in Gibraltar. It is not possible for the number of people that have been quoted to be unemployed given the fact that the total volume population of Gibraltar taking the people in work and the people out of work would not be big enough to coincide with those figures. So those figures that are being quoted today are wrong and the correct figures are the figures that were published at the time they were done. I am sure that once we have access to all that we will be able to give the Minister an explanation but if he is able to do his job better because in fact what he is saying here today is that my Colleague succeeded in bringing down Gibraltarian unemployment from 897 in December 1994 according to him to 331 in April 1996 and therefore, if anything, since the job of the Minister of Labour is to reduce unemployment what he ought to be doing is bringing a motion congratulating Mr Baldachino for having reduced unemployment from 900 to 330, according to him.

HON LT-COL E M BRITTO:

Mr Speaker, since I have been in this House since 1988 I have not heard such a serious charge being brought against one Member or a number of Members, never mind one Minister or more than one Minister. The motion accuses Opposition Members of misleading this House. That is a serious offence under any parliamentary procedure and in some Parliaments would be tantamount to resignations. Not only have we not heard a defence. Not only have we heard a smokescreen but the Leader of the Opposition has in fact admitted that what my hon Colleague has said is true because he has said that in essence when they did not like or did not agree with the figures that the Statisticians were providing they changed them and given them here as changed. That is in fact what the motion says, that the figures have been changed and given different to what they were presented to Ministers. I have no doubt it is correct if those figures that my

Colleague has given are right then the charge, as far as I am concerned, and I have no conscience about voting in favour of the motion, the charge is proved because it has been admitted on the other side that they have misled the House.

HON J J NETTO:

Yes, Mr Speaker, it was actually predictable the line of defence of the Opposition. When faced with the kind of accusations that I have been able to put forward they could either go on the path of trying to rubbish me on a personal basis, which we have seen in the main by the contribution of the Hon Mr Baldachino, or as we know the ability of the Leader of the Opposition in his skills as the artful dodger to try and move away on a tangent and not address the issues. The issues are very simple. The issue is that there is a system in place, a system which I never introduced, a system that has been there to the best part of my recollections from what I have been told, from 1990 or 1991 or 1992. The system is that it accounts for people as they themselves have said and recorded in Hansard, people who come and sign and therefore it is a head count of people registered seeking employment. The system that they introduced is the system that allows for people to be lapsed. It allows for people to be employed and it allows for people to move within different age bands. That is not the system introduced and the reason why I had to take a lot of time to research this is because I wanted to ensure that the same system that I inherited was the same system and that no administrative or procedural changes had taken place from their time to my time. The point is this, the point is that when a question is served by Members of the Opposition to the Minister responsible, in this case me as Minister for Employment, that question obviously comes to the Ministry of Employment and I do not deal with it, my officials deal with it in the same manner that it was their officials who dealt with it and as they have said and recorded in Hansard. I do not go getting these printouts across my table and saying, "well, Smith has not got a Gibraltarian name so I will cross Smith". The figures that the officials give me is the figures that I stand up and say in this House. This is the issue. The issue is that there are two figures, the integrity of two figures, not figures that pass on from the Ministry of Employment, then the ETB, via the House of Assembly, via 6 Convent Place or wherever and where then people are crossed or are removed or added or taken away. He cannot get away with that. The fact of the matter is that even the lapsed is not something that I introduced. They

introduced it, it is a common practice, not just in Gibraltar but in any other place so therefore lapses have taken place, sometimes it is an average, sometimes it is below a 100, sometimes it is over 100 and we have the situation where in January 1994 it was 400. The month after December 1993 when the unemployment figure was at 897. Obviously, Mr Speaker, the fact of the matter remains that if one is going to lapse 400 which is more than the average, the Minister at the time should have stood up there and should have made an explanation as to the reasons why there was something like 400 lapses in January 1994 following the highest point of December 1993 and even if as now accepted by them that they actually handled and manipulated the figures once they were passed on from the officials, the fact of the matter is that the information or whatever either the Minister at the time or the then Chief Minister should have informed the official that they had crossed out certain names so that they would not continue to reappear in the following months but such notice, such information, was never translated so the fact remains that they have said in this House that these were the people who registered in the ETB and the information was provided by the people who work in the ETB and this is what I do and this is what they said they were doing but they were actually not doing it because we have seen and I have demonstrated and I can demonstrate that the figures that they stood up and said in the House do not tally with the head count, the raw unadjusted figures and he can go on talking about anything he wants. He can talk about whether the unemployment statistics are passed on from a month to a quarterly basis but even there, Mr Speaker, he is not being honest with what he himself used to say when he was in Government because I can quote time and time again when he stood up here and he said that it was better to have quarterly figures because they were unforeseen circumstances. He said that and it is recorded in Hansard. I can look for it and I can quote him but the fact of the matter is that they have the information here even on a monthly basis and they said, and recorded in Hansard, that they would only give the figure on a quarterly basis but I have given the figure, despite of giving the figure on a quarterly basis, I give them on every single month. People can interpret a statistic in a different way but they are true, integral figures. No mishandling, no misrepresentation and I can stand up and say that but they cannot and they cannot run away from the central issue. He can keep on with all his red herrings, with all his smokescreens but he has to address the central issue which he has not done this morning, Mr Speaker, so I commend the motion to the House.

MR SPEAKER:

Before you commend the motion, you said you were going to give way.

HON J J NETTO:

I beg your pardon, Mr Speaker, I give way to the Leader of the Opposition.

HON J J BOSSANO:

Mr Speaker, he has just said that the figure for January 1994 was 438 less than the figure for December 1993 which is what he said in the first place and which he got an answer to. There was no figure published for January 1994 so how can anybody remove 438 from the figure of December when there was no figure for January?

HON CHIEF MINISTER:

Mr Speaker, one can see it is symptomatic of the attempt to confuse the issue in the hope that the central issue will go away. What is the relevance of saying that there cannot have been 438 lapses between December and January 1994 because no figure was published for either of those two months? The question is not whether the figure was published, the question is what happened in the office? We know that the hon Members never published figures. We do not have to stand up here three years after the event and we know he never published the figures. The fact of the matter is that when he stands up as he did towards the end of his own contribution to the debate and he said "the Minister should be moving a motion to congratulate Mr Baldachino because according to the Minister he has reduced the level of unemployed Gibraltarians from 840 to 331." Mr Speaker the reason why the figure dropped from 840 unemployed Gibraltarians in December 1993 or thereabouts to 331 later was not because the hon Member had found employment for the 500 odd people in between, it was because in December 1993 or rather after the 31st December 1993, and before the figure for the next months were totted up, never mind whether they were published or not, they were totted up in the ETB records, the hon Members lapsed, that is to say... [Interruption] the hon Member may say it is not true but it reflects it in the Department's record, 438 of the 840 odd people were removed from the list at the stroke of a pen, not because they had found work but because they were deemed to have lapsed.

MR SPEAKER:

I am sorry, to give way is to elucidate some matters but not to make a speech.

HON CHIEF MINISTER:

Mr Speaker, I have finished but I am elucidating on a matter in which the hon Member, I think, tried to cloud the issue, it is exactly what I am doing, I am addressing only the matter of his last intervention, but indeed I have made my point, I am obliged to you Mr Speaker.

HON J J NETTO:

Yes, Mr Speaker, just one very little point in relation to the legal position. That is that he talks about the fact that I am not producing figures for 1995 and 1996. The print-outs are there just as these print-outs were there at the time so I have got no problem with that. Mr Speaker, I commend the motion to the House.

Question put. The House divided.

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

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

Absent from the Chamber: The Hon R R Rhoda
The Hon T J Bristow
The Hon R Mor
The Hon J C Perez

The motion was carried.

BILLS

FIRST AND SECOND READINGS

THE BANKING (GIBRALTAR AND UNITED KINGDOM PASSPORTING) ORDINANCE 1998

SECOND READING

HON P C MONTEGRIFFO:

I beg to move that the Bill be now read a second time. Mr Speaker, the Banking Ordinance in its present form gives effect to the European Union requirements for passporting of credit institutions. The matter of passporting between the United Kingdom and Gibraltar is of course not a matter for the European Union as such. However, it is the policy of both the Government of Gibraltar and the United Kingdom that passporting between both Gibraltar and the UK should be governed by the same rules as apply to passporting between territories of the different Members within the European Economic area. At the moment, the Banking Ordinance, the 1992 Ordinance, does not achieve this and therefore the Bill before the House seeks to make the necessary amendments to Gibraltar law. Sub-clause 2(1) sets out the purpose of the detailed amendments which follow. Sub-clause (2) of clause 2 makes fundamental changes by ensuring that as a matter of Gibraltar law references to the Banking Ordinance, 1992, to the territory of a member state do not, in the case of the United Kingdom, include Gibraltar. This change reflects the provisions already made in relation to financial services by section 2(3) of the Financial Services Ordinance, 1998. This theme is carried through then in sub-clause (3) of clause 3. This amends the 1992 Ordinance to make clear that the rules which are intended to apply to applicants from outside the European Economic area do not apply to applicants from the UK. The amendments made by sub-clause (4) of clause 2 ensure that Gibraltar licensees proposing to carry on a business in the United Kingdom do so on the same basis as any other proposal to passport into another territory of the EEA. These amendments will therefore allow the Gibraltar Financial Services Commission to give the appropriate notices to the UK regulatory authorities.

The other important provision in the Bill is sub-clause (6) of clause 2 which amends section 71 of the 1992 Ordinance. That section effectively provides that European-authorized institutions cannot passport into Gibraltar in respect of any activity unless it is

authorised to carry on that particular activity in any EEC state. Again we are doing the same change here. We are changing "EEA state" to "territory" thus enabling UK-authorised institutions to passport into Gibraltar on the same basis as an institution authorised in another territory of the EEA. Mr Speaker, this Bill does not change the practice of banks that have been coming to Gibraltar from the UK. All it does is rationalise the basis upon which they come here, namely, they are now to be established in Gibraltar and vice versa, Gibraltar banks in the UK, as if they were European banks established in a territory of the EEA. It is a change of form rather than of substance but it is important in regularising the passporting regime which we have put into place. I commend the Bill to the House.

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

HON J J BOSSANO:

Mr Speaker, the Bill is unusual in that the title of the Bill, which is Banking (Gibraltar and the United Kingdom Passporting) Ordinance, would give the impression that we have got a law as a result of which people will be able to passport into the United Kingdom, which of course is not the case. Nor is it the case that only after the law comes in will people from the UK be able to passport into Gibraltar because they have already been doing that, we have got here branches of UK banks. In fact, in the last meeting of the House we actually had a situation in which what was a branch of the bank from the United Kingdom became a branch from the Isle of Man. In fact, we were changing from one branch to another branch and that has always been possible. So to the extent that what the Ordinance is doing is to make clearer what was already happening then obviously we have got no problem with the Bill. I think we have difficulty in understanding why it is that we need to be talking about the territory of an EE state instead of an EEA state because as far as we are aware the only EEA state that has a territory which is distinct as a jurisdiction from the state is the United Kingdom with Gibraltar where we have got two Licensing Authorities. Everywhere else, irrespective of whether Spain has got a territory in the middle of the Atlantic or in North Africa, any banks operating in those territories are deemed to be operating on the mainland because the license comes from Madrid and from the central bank. To my knowledge that is what happens throughout the other EEA states. It is not clear to me why it is that there is a requirement to talk about the

territory of an EEA state in substitution of the present position which is an EEA state since, as far as I can see, it is only Gibraltar that has got a territorial jurisdiction distinct from the national one, to my knowledge, I do not know of any other one. In fact, that is essentially the problem that we face because the argument that has been used consistently by Spain is that one cannot have two Licensing Authorities issuing identical licences, or purporting to issue identical licences which happens in Gibraltar with the FSC issuing Gibraltar Banking Licences and the Bank of England issuing UK Banking Licences. The question of applying to the United Kingdom the same criteria that we apply to credit institutions seeking to passport into Gibraltar from any other EEA state was something that in the discussion with the United Kingdom the UK accepted we should do even though it was one way and not reciprocal. Of course, since we are interested in having branches, even though we may not be able to passport into the United Kingdom it is in Gibraltar's interest that people should passport into Gibraltar and we support that. I think it would be important to know whether now that we are actually putting on the statute book the provision of equal treatment for UK banks as compared to other EEA banks, whether in fact this is an indication that the United Kingdom will be doing the same to banks from Gibraltar because the provision in the UK regulation when they were brought in in 1992 left Gibraltar out because in the definition of a credit institution it stated that a credit institution was either one licensed by the Bank of England or licensed by the equivalent of the Bank of England in another member state and Gibraltar fell between two stools because we were neither licensed by the Bank of England nor licensed by the central bank of another member state. I think our law at the time was silent on the question of the United Kingdom licences being valid in Gibraltar and in practice they were already being treated and, indeed, a number of them were already here even before we joined the EEC, so it would have been absurd to, for example, remove the licence from Barclays Bank because we had joined the EEC; they already were here with a branch from the United Kingdom. We are supporting the Bill but we would like to know whether this is an indication that now the United Kingdom is going to accept Gibraltar Banking Licences the same as other member states are required to do because the argument that was used was that in fact the United Kingdom was not obliged by Community law to accept Gibraltar banks and we are not obliged by Community law to accept UK banks. We want UK banks to come to

Gibraltar so I think we will have no problem in accepting this.

I also would like to ask whether the fact that we have a wording here which compares the procedures that need to be followed by the United Kingdom branches to come in to those coming in from another EEA state, whether that could create a problem if we have difficulties with other EEA states. If there is a problem of getting the other EEA state to accept branching into Gibraltar, could this affect the ability of UK banks because we are mentioning in the law that they will be treated in the same way?

HON P C MONTEGRIFFO:

Mr Speaker, if I deal firstly with the point on definition of territory of the EEA that the hon Member has raised. I fear he may not have understood the mechanics being used in the Bill to achieve the aim that we have been discussing. Essentially, the replacement of the phrase "EEA state" by "territory of an EEA state" is precisely to get over the difficulty of the UK/Gibraltar position, namely that if the Banking Ordinance 1992, were to remain as presently drafted, it would retain the references to EEA state there would be no way in which Gibraltar and the UK could interact under the Banking Ordinance structure in passporting because we are not two separate EEA states. We are territories of an EEA state and therefore the wording that has been put in has been specifically the mechanism to get round that problem, the replacement of "EEA state" by "territory of an EEA state" so that between ourselves and the UK we can each regard ourselves as territories of the EEA state. That has been the main reason for the change. There may indeed be other EEA states and I think Gibraltar and the UK are not the only examples, there may be other states within the EEA that actually have a number of territories and therefore... Greenland is an example, Finland and Aarland is another example that comes to mind and other examples which the definition will help but let us be clear, the reason the change is implemented is precisely to give effect to the difficulty that arises from the wording of an EEA state that simple phraseology would not allow passporting between Gibraltar and the UK because we are not two separate EEA states. The whole mechanism of the Bill has been to replace those references of EEA states, references of territory of an EEA state.

The main issue is the question of...

HON A ISOLA:

Mr Speaker if the Minister will give way, may I just ask, if we are changing the law in Gibraltar to provide for that work that there are two within one, and the bank were to seek to passport into Gibraltar from the UK, what is the position in the UK? Would they not also require to change the law to provide similarly that the territory of Gibraltar is not a member state but can come within in exactly the same way as is being provided here. Passporting from there to here is no problem because we have done it once this Bill goes through the House, what is the position going backwards, from Gibraltar to the UK, will this not require a change in their law as well to allow for exactly the same mechanism.

HON P C MONTEGRIFFO:

Mr Speaker, I am grateful, this is the second issue I was dealing with. I was moving on to the issue of reciprocity. It is indeed intended that there will need to be reciprocal arrangements. This is not just an attempt to have UK banks established in Gibraltar or to regularise their position. It also is an attempt to once and for all get over the difficulties that have existed with Gibraltar institutions passporting to the UK. This would complement the rest of the passporting regime which we are putting together. There is indeed a view that changes to UK legislation is required to give effect to this and I say it in that form, because the opinion is not entirely definite. There is a view as well that under existing UK law, provision could be made for such passporting within the regime that we are putting in and because of parliamentary time in the UK being so difficult to obtain this is an alternative that we have been keen to explore. In any event let us be clear, we are talking about reciprocal arrangements. We are talking about Gibraltar putting into place its own piece of the jigsaw today and we expect the UK to put into place its own piece so that it completes the picture.

The last point made by the Leader of the Opposition is whether the fact that we are now equating the UK/Gibraltar position with other member states of the EEA, might complicate passporting arrangements. Mr Speaker, there is no evidence or reason to suppose that will be so. Certainly our experience in insurance where we have had more fortune with some member states as opposed to others does not give rise to any anxiety. Regulatory authorities, within members states, take a

certain view and applications are processed quite normally irrespective of the position taken by regulatory authorities in other territories so I have no reason to believe that that will cause any difficulty.

Question put. Agreed to.

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

Question put. Agreed to.

**THE INSURANCE (MOTOR VEHICLES) (THIRD PARTY RISKS)
ORDINANCE (AMENDMENT) ORDINANCE 1998**

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to amend the Insurance (Motor Vehicles) (Third Party Risks) 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 now read a second time. Mr Speaker, the Third Motor Insurance Directive 90/232/EEC was transposed in Gibraltar last year. The directive requires that policies issued in member states should cover liability for injuries to third parties arising anywhere in the territory of the European Union. However, the directive does not require motorists to carry documentary proof of that. This Bill will provide clarification that the motor insurance policy issued in other member states in the European Union will meet the requirements of this directive unless documents point to the contrary. In other words, the Bill introduces a legal presumption that EU vehicles comply with the terms of the directive 90/232/EEC. 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 Minister has said that this provides for a presumption that the insurance issued in another member state will comply with the terms of the directive. In fact, there is also the reference to a relevant foreign state and the directive does not cover relevant foreign states as far as we can tell. There has been no explanation given as to why non-member states are also included in this. The other point, of course, is that the directive itself, as the Minister has told us, does not provide for a requirement that there should be documentary evidence. I am afraid I am not able to understand why it is that by us presuming that it does, it is sufficient safeguard because we could presume that it does but it may not. As far as I recall the directive puts a responsibility on the member state to ensure that vehicles that have accidents in its territories are complying with the criteria of minimum cover for passengers. In fact, in our own legislation we provide for cover to all persons which goes beyond passengers, that means to say, somebody could have an accident and the injured party could be a pedestrian. The directive in fact talks about passengers other than the driver. Our law talks about all persons. It talks about non-EU states and as I said perhaps he can explain how it is that it is sufficient in law that we say we presume the insurance cover is there and then that makes the insurance cover be there even though the premium may not have been paid and the insurance policy might not have been there. I would have thought that it would have been necessary for the documentary evidence to be there if we as the relevant member state have got an obligation to ensure that a driver using our roads has got comprehensive insurance to protect somebody who then wants to claim damages which in fact in our case I seem to remember also deals with damages to property which is not in the directive either.

HON CHIEF MINISTER:

Mr Speaker, I believe that our law talks about insurance cover for injuries to third parties and that of course the law has, for a long time, defined third parties as including obviously a pedestrian or somebody knocking your vehicle and a passenger, but not the driver. The driver is not regarded as a third party but his passengers are, which is why third party insurance covers passengers and people outside the vehicle but does not include the driver and to obtain insurance cover for a driver one needs to get a comprehensive insurance policy

because the driver is not deemed to be a third party but he is the only one who, under the law, is not deemed to be a third party. I cannot tell the hon Member right now what the reason for the reference to relevant foreign state is, except that it appears also in the principal Ordinance to which we are referring which dates back some time. I think that the reason for that is that this might be one of those European measures which in fact is rather like the ones which extend to the EEA and some others extend to EFTA. As an international obligation it extends beyond just the member states, for example, in 1997 we passed a Bill to delete from the definition of relevant foreign state as it then was Austria, Finland, the German Democratic Republic and Sweden. I can only assume that that was because they had passed from some other category of state into the EEU category. Although I am surmising and I do not profess to have researched the point, it suggests, to me at least, that that is the reason for it. As we will not be taking the Committee and Third Reading stage of this Bill today this is the one that we will be leaving over on the agenda, I will have an opportunity to give a fuller explanation for that to the hon Member at the next sitting of the House.

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 at a later stage in the meeting.

THE DRUGS (MISUSE) (AMENDMENT) ORDINANCE 1998

HON K AZOPARDI:

I have the honour to move that a Bill for an Ordinance to amend the Drugs (Misuse) Ordinance to substitute the Public Health Director for the Director in section 25 of that Ordinance be read a first time.

Question put. Agreed to.

SECOND READING

HON K AZOPARDI:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this is a very short Bill and

the purpose of this is to amend section 25 of the Drugs (Misuse) Ordinance as has been stated to substitute the Public Health Director for the Director of Medical and Health Services as the person who may designate persons to give evidence of analysis for the purposes of proceedings for an offence against the Drugs (Misuse) Ordinance. This amendment should have been included in the schedule to the Gibraltar Health Authority Ordinance 1987, as one of the consequential amendments when the post of Director of Medical and Health Services was abolished. Hon Members will be aware that some of the roles of the Director of Medical and Health Services were transferred to the Chief Environmental Health Officer, the General Manager, now Chief Executive, and others to the specialists in community medicine, now Public Health Director. The Public Health Director has various other roles and responsibilities within the provisions of the Drugs (Misuse) Ordinance and it is considered appropriate that this responsibility should be transferred to him. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON K AZOPARDI:

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

Question put. Agreed to.

THE MEDICAL (GROUP PRACTICE SCHEME) ORDINANCE

HON K AZOPARDI:

I have the honour to move that a Bill for an Ordinance to amend the Medical (Group Practice Scheme) Ordinance be read a first time.

Question put. Agreed to.

SECOND READING

HON K AZOPARDI:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Government announced some

controls that were to be introduced into the GPMS scheme some months ago when the Department drew up what it thought were the difficulties that the Scheme was facing. It also considered, not only financial measures that could be taken, but also structural and administrative ones and it drew up the possibility of establishing a statute which would provide in the way that this statute before the House does certain provisions which would better regulate the Scheme. This Bill seeks to establish a Statutory Board which will replace the decision which is taken, at the moment by the Government or the Minister on whether pharmacies can join the GPMS scheme and dispense prescriptions under it. The Statutory Board which is established through this Ordinance will receive applications for membership of the Scheme by pharmacists. Apart from dealing with applications, it will also administer and regulate the scheme and it has powers under section 12 of the Ordinance, the proposed amendment, which allows it to do so. I draw the hon Members' attention to that section. The Board will also have wider power to summon witnesses and receive information which will assist it in determining applications to join the Scheme and indeed when regulating the membership and administration of the Scheme. Section 22 of the proposed amended Ordinance also allows the Minister to have wide powers of enacting or prescribing regulations to better control the Scheme. The intention is that this Ordinance, once enacted by the House, should be followed by regulations which will set out the procedure for applications for membership. This Ordinance will allow applications to be made but the procedure itself will be in the regulations. It will also provide criteria which the Board will apply when determining applications. It will set up conditions of membership and duties. Will provide disciplinary powers of the Board and it will replace the contractual arrangements which are in place with statutory terms of service, effectively putting the contract into statutory form. I commend the Bill to the House.

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

HON MISS M I MONTEGRIFFO:

Mr Speaker, Opposition Members, will not be supporting this Bill for various reasons. As far as we are concerned we believe that the Health Authority is quite capable of entering into an agreement with the pharmacies that provide a service under the Group Practice Medical Scheme without the need of having to constitute a new

board and a board, which, furthermore, is separate from the Gibraltar Health Authority. We can understand that if, for example, nurses are going to be registered, or doctors, then one needs a Board with professional input. But this board, Mr Speaker, is being constituted for different functions which, as I have said, we believe can be undertaken by the Health Authority. More so, functions for which the Minister lays down his criteria. So much, Mr Speaker, for the independence of the Health Authority that this Government has preached so vehemently in the past. On the other hand, Mr Speaker...

HON K AZOPARDI:

Will the hon Member... It is just that I did not follow the point, if you could repeat it?

HON MISS M I MONTEGRIFFO:

I am saying, Mr Speaker, that so much for the independence of the Gibraltar Health Authority which this Government has preached so vehemently in the past. The Board will not be independent of the Government. It will do what the Government wants because the Minister decides who is on the Board, how it works, the terms and conditions of membership, the pricing of medicinal products, et cetera. So this Bill, in effect, is taking away more powers from the Gibraltar Health Authority and passes it on to the Minister. Also this Bill as the Minister has said, is only creating enabling powers, so really without the regulations, this Bill cannot work, which means that until we see the regulations and the procedures to be implemented that the Minister has spoken about, we are unable to make a realistic assessment. Therefore, Mr Speaker, for all these reasons we are abstaining.

HON K AZOPARDI:

Yes, Mr Speaker, I asked the hon Member to repeat a point. She repeated her analysis but not the point. I am afraid I cannot reply because I do not know what exactly she said to prove the analysis which she repeated. I will reply to the points that she made generally. I understand that the rationale of the Opposition, when deciding not to support this Bill is because it believes that the GHA is capable of enforcing proper controls in relation to the Scheme. Let me say that this is not the Government who have suddenly decided one day that to remove such control from the GHA and to replace it in the hands of this Board or in the hands of

a statute, it is the GHA precisely itself who have, best placed as they are, because they are dealing with this on a day-to-day basis, come to the conclusion that this is a better way of proceeding and that it is better for there to be a statute regulating the terms of membership so that there can be larger, more stronger, disciplinary powers that can be applied in relation to pharmacies should the need arise. So, I cannot accept the analysis that the GHA, they feel, are capable of doing it if the GHA management are telling me that they themselves feel that this is an appropriate measure to take and that this will better regulate the scheme.

HON J J BOSSANO:

Is it intended then that this body should employ people to do that work if the GHA management have said it is better that they should not take it on? Is the Board then going to have its own employees to do this?

HON K AZOPARDI:

No, I do not understand the point the Leader of the Opposition is making. The GHA management's position is that a statute is better in the sense of clarity. It will provide more extensive powers which can then be applied but it is not intended that this Board should employ people. The Minister will appoint the members of the Board in the same way that when drafting this legislation, consideration was given by the Legislation Support Unit to similar regulations enacted under the National Health Service Act in the United Kingdom. There are particular 1992 regulations there which effectively also provide for a Board to determine applications to join the regional schemes and for terms of membership instead of being placed in a contractual form, to be placed in statutory form. We have used that as a basis for that idea and really the rationale is not to better incorporate the powers that the Board will have. It is not intended that this should be entirely separate from the GHA because as the hon Members point out the Minister will appoint the Members of the Board, but this is a scheme run by the Authority. The Authority, if I can put it this way, are the client. We are the client, and therefore it is right that there should be regulation of the scheme in accordance with the client's needs and the needs of the community and that is the rationale behind this statute. The fact that this used to be in contractual form before and now will be in statutory form, really frankly, does not reveal that the statute will be more or less influenced by the Government of the

day than the contract. The contract used to be negotiated by officials of the Authority or the Government with the pharmacists in accordance, presumably, with principles laid down by the Government of the day and the statutory terms will be the same and so there will be no difference in that respect and I do not accept the point that the contract would be less influenced than the statute for those reasons. Mr Speaker, I have nothing further to add.

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 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 J Gabay
The Hon A J Isola
The Hon Miss M I Montegriffo

Absent from the Chamber: The Hon J J Holliday
The Hon R Mor
The Hon J C Perez

The Bill was read a second time

HON K AZOPARDI:

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

Question put. Agreed to.

COMMITTEE STAGE

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 Banking (Gibraltar and United Kingdom
Passporting) Bill 1998

The Drugs (Misuse) (Amendment) Bill 1998

The Medical (Group Practice Scheme) Ordinance (Amendment) Bill 1998.

THE BANKING (GIBRALTAR AND UNITED KINGDOM PASSPORTING) BILL 1998

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

Clause 2

HON P C MONTEGRIFFO:

Mr Chairman, in sub-clause 2(1)(b), I have not given notice of any amendment because it is of a typographical nature. It is a reference in the final line of that sub-clause (2) of the European Area, and that should really of course be to the "European Economic Area". There is a reference earlier in the Ordinance to the European Economic Area as well. I wish simply to correct that typographical mistake.

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

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

THE DRUGS (MISUSE) (AMENDMENT) BILL 1998

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

THE MEDICAL (GROUP PRACTICE SCHEME) ORDINANCE (AMENDMENT) BILL 1998

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

Clause 2

HON K AZOPARDI:

Mr Chairman, I have noticed a couple of typographical errors there under clause 2. If Mr Chairman goes to section 11, under clause 2, the definition of "Minister", I think the "the" there is superfluous. It means the Minister with responsibility for Health. I wish to delete the "the". If Mr Chairman would then go to 18(2)(a) it should read "the neglect or refusal by a Scheme Member", so "refusal" should be correctly spelt

and "a" should be inserted. I would be obliged if those amendments could be made.

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

The Long Title stood part of the Bill.

Question put on the Medical (Group Practice Scheme) Ordinance (Amendment) Bill 1998.

The House voted.

For the Ayes: The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon 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 J Gabay
The Hon A J Isola
The Hon Miss M I Montegriffo

Absent from the Chamber: The Hon J J Holliday
The Hon R Mor
The Hon J C Perez

THIRD READING

HON ATTORNEY-GENERAL:

Mr Chairman, I have the honour to report that the Banking (Gibraltar and United Kingdom Passporting) Bill 1998; the Drugs (Misuse) (Amendment) Bill 1998; the Medical (Group Practice Scheme) Ordinance (Amendment) Bill 1998, have been considered in Committee and agreed to with amendments and I now move that they be read a third time and passed.

Question put.

The Banking (Gibraltar and United Kingdom Passporting) Bill 1998; and the Drugs (Misuse) (Amendment) Bill 1998; were agreed to and read a third time and passed.

The Medical (Group Practice Scheme) Ordinance (Amendment)
Bill 1998

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 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 J Gabay
The Hon A J Isola
The Hon Miss M I Montegriffo

Absent from the Chamber: The Hon J J Holliday
The Hon R Mor
The Hon J C Perez

The Bill was read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that this House do now adjourn
to Thursday 3rd December 1998 at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 12.05 pm on
Friday 13th November 1998.

THURSDAY 3RD DECEMBER 1998

The House resumed at 10.02 am.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon P C Montegriffo - Minister for Trade and Industry
The Hon Dr B A Linares - Minister for Education,
Training, Culture and Youth
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 and Buildings
and Works
The Hon K Azopardi - Minister for the Environment and
Health
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 J Isola
The Hon J J Gabay
The Hon J C Perez

ABSENT:

The Hon R R Rhoda
The Hon R Mor

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) Statement of Consolidated Fund Reallocations approved by the Financial and Development Secretary (No. 16 of 1997/98).
- (2) Statements of Consolidated Fund Reallocations Approved by the Financial and Development Secretary (Nos. 1 to 3 of 1998/99).
- (3) Statement of Improvement and Development Fund Reallocations approved by the Financial and Development Secretary (No. 1 of 1998/99).

Ordered to lie.

MOTIONS

HON J J NETTO:

Mr Speaker, I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with a Government motion.

Question put. Agreed to.

HON J J NETTO:

Mr Speaker, I beg to move the motion of which I have given notice which reads: "That this House approves the Statistics (Employment Survey) (Amendment) Order 1998".

Mr Speaker, the Employment Survey has been carried out by the Government Statistician since April 1971 under the provisions of the Statistics Ordinance 1970, and the Employment Survey Order 1971, of that Ordinance, as amended in 1977, 1985 and 1993. The purpose of the survey was to collect statistics on employment and hours worked by all employed persons in Gibraltar as at April and October of each year and therefore constituted an important tool for the Government's assessment of the labour market. Between April 1971 and October 1984 all employers had been required to complete questionnaires in respect of their employees, specifying for each, their occupation, nationality, sex, whether adult or juvenile, whether full-time or part-time, total earnings and benefits. In addition, in respect of weekly-paid

employees, information on total and overtime hours worked and on overtime earnings was also collected with effect from the 1st April 1985 and as a result of the full opening of the frontier the Employment Survey Order was amended to able the Government Statistician to obtain data on the country of residence of employees. Since then, figures have been published showing the number of frontier workers employed in Gibraltar as declared by their employers. With effect from October 1992, the Employment Survey was no longer carried out on a questionnaire basis. Income tax deduction cards submitted by employers at the end of each tax year in respect of each employee were revised to include a section where most of the statistical information necessary for the Employment Survey was to be included. This information was processed in the Income Tax Office computer. At the same time all the necessary steps were taken to preserve the confidentiality of each individual tax record. The objectives of conducting the survey from the Income Tax Office records were threefold: Firstly, the response rate and consequently the level of accuracy was improved since there appeared to be a higher propensity for employers to submit deduction cards and questionnaires. Secondly, the business community welcome the decrease in the amount of form-filling which they felt was already abnormally high. Lastly, there could be a marginal improvement on timing regarding availability of the final report. The main drawback, however, was that information on hours worked including overtime in respect of weekly-paid employees and overtime earnings could no longer be obtained. The deduction card system could not cater for this. As a result the Statistics Employment Survey Order was amended in February 1993 and the Government Statistician would no longer require employers to provide this data. The position at present is that the Employment Survey will continue to be compiled on this basis up until and including that of April 1998.

Mr Speaker, the Government have decided that it wishes to move away from this system and revert to the survey being carried out by the Statistics Office where it will once again command a high priority in the functions of the Department. Experience has shown that it now takes longer than ever before for the Employment Survey to be completed in any given year. The submission of deduction cards at the end of the tax year by private sector employers which spreads over a number of months, together with the delay in submissions of records of Government employees as a result of on-going pay negotiations have led to unacceptably long delays in the completion of the

survey. The survey will be conducted directly by the Statistics Office via questionnaires and, where relevant, assistance will be provided to employers with a view to improving the rate of returns of the information. The Employment Survey can boast of an excellent response rate in the past and it is not envisaged that a move away from the deduction card system will seriously undermine its accuracy or validity. On the contrary, it is intended to broaden the scope in several ways. Employers will once again be required to provide information on hours worked and overtime earnings of weekly-paid employees. In addition, with the collection of data on the age group of employees and with a more detailed analysis of their occupations. The Government's perspective on the labour market will be greatly improved. Furthermore, the new employment Survey will be carried out on an annual basis and only in respect of October of each year. As such, it should not be a cause for concern by those required to complete the questionnaires. The Employment Survey will complement other labour market statistics currently being compiled by the Employment Service. As a snapshot of employment levels, or to be more precise, of the number of jobs as at October in each year, it will continue to serve as a useful check on the state of the job market in Gibraltar.

Mr Speaker, I commend the motion to the House.

Question proposed.

HON J L BALDACHINO:

Mr Speaker, we will be abstaining on this motion. Taking into account what the Minister has just said, we believe that this will not produce more accurate statistics than what are being compiled at the moment using the PAYE returns. This will be based on the goodwill, in some cases, of employers returning the forms and as the Minister must know in many cases what they submit is not accurate because of people that might have left employment and so on. It must be clear that it is the Government that is responsible for whatever figures they publish. Nevertheless, what they intend to change does not produce what the Explanatory Memorandum says in the Legal Notice that they propose to change. If he looks at the Explanatory Memorandum it says "the requirement of the statistic to be collected by the Government Statistician, the number of hours worked completed by both weekly, monthly and monthly-paid employees". If he looks at Part 3 of Schedule 2 he will see that it is not included there for the monthly-paid. Why, Mr Speaker?

Simply because what they have done is that the 1985 Amendment Order has been copied into this. Obviously, either the Explanatory Memorandum is incorrect or what they intend to do will not be able to be done according to the Legal Notice.

We believe for statistics purposes that it is better if we have it in six monthly periods, to see how employment and wages have progressed. There are other things which I would like to enquire. Why is it not relevant for statistic purposes that the collection of information of weekly-paid employees should be different to that of the monthly employees? The monthly, as I have said before, even though the Minister said the hours worked during the week is scheduled to part B for the monthly, there is also nothing on overtime worked for monthly paid workers. Is it that the Government does not consider that to be important statistic information? As I have said before, Mr Speaker, I understand that they are going back to 1985, even though 1985 it was produced in April, they now intend to produce it in October. The Government are keeping paragraph (3) of the principal Order after 1993 which is when we changed it. Therefore, by what I have said, Mr Speaker, and if we could have an answer if the intention is to change Part B or that the Explanatory Memorandum as I have said is incorrect, which of the two is it? We will be abstaining on this motion because we believe that it will not be reflecting accurately the statistic information when we get the next Employment Survey.

HON J J BOSSANO:

Mr Speaker, can I just make one additional point on which we would like an answer. When we were given notice by the Government of their intention to go back to collecting the information by service of employers, I asked about the comparability with the previous statistics. I think we had an indication then that the information currently collected through the Tax Office will continue to be so collected. We would like confirmation of that because presumably, there is nothing to prevent the existing system being available as well and I think it would be a useful thing then to have the two things cross-referenced.

HON CHIEF MINISTER:

Mr Speaker, just two small points that occurred to me as I was hearing the hon Gentlemen and that is, that the Hon Mr Baldachino makes the point that they would prefer the

figures to be six-monthly, April and October as they now are. I think he said so that they could see how employment and wages were progressing. I think it is important just to point out, so that no one should misinterpret his remark, that of course, the figures are currently published only once a year. It is not that at the moment they get figures twice a year and that now we are only going to provide them once a year. The figures at the moment are only published once a year but they relate to two separate dates during the year, April and October. Now, he will get the information also once a year but it will relate to one date in the year instead of two dates in the year. We hear what he says, but we disagree, we think that he is now going to get that information more quickly than he used to get it before and that he will therefore get it at a time where it is more relevant to whatever use he wishes to make of it to criticise Government on its policy, rather than the present situation which I am sure they find, as we found when we were in Opposition, that by the time the Employment Surveys were published, following the handing in of PAYE cards, the information was so historical that it was relatively easy for the Government to slither out from whatever criticism might be due to it by suggesting that the situation had of course radically moved on since then. That is really just by way of clarification.

In answer to the question posed by the Leader of the Opposition I should say that it is not presently the intention of the Government, except as far as April 1998, to continue to publish two sets of statistics, one of which, in any event will have necessarily to come much later than the other. The Government have no objection provided the information is reasonably available and provided it does not mean the two systems have to be operated in parallel with a significant administrative burden, the Government would be available if the income tax information is readily available, the Government have no objection to continue to provide it to the hon Members in answer to questions or howsoever the information is available, if it is readily available. The Government do not regard it as helpful to provide statistics on the same issue produced by two different statistical methods to do it when they cannot both be provided simultaneously. Necessarily, one would have to be delayed more than the other because of the delay in...

HON J J BOSSANO:

Can I ask, Mr Speaker, whether in fact the element of the return that the employers now make under the PAYE is not

going to be changed? Will the information continue to be provided to the Tax Office irrespective of the fact that it will not be used to compile the survey, or is that being changed?

HON CHIEF MINISTER:

Mr Speaker, the answer is that no irrevocable steps have been taken in respect of that issue. It is not presently the intention that the Commissioner of Income Tax should continue to ask for information that would no longer be needed. On the other hand, there is no reason why he should not continue to ask for it. In other words, there is nothing in the Order that we are debating here today, that would prevent the Commissioner of Income Tax from deciding to continue to ask for the information as a second resource of statistical information for the Government. It is not presently the intention that that should be done but certainly the Government are willing to consider the point and perhaps leave that source in place for whatever use it might put to it in future. I will give that matter some consideration and come back to the hon Members.

HON J J NETTO:

Mr Speaker, I heard the Hon Mr Baldachino say that the Opposition intends to abstain on this motion. In answering some of the points that they have raised, I would like to persuade them to change their abstention and to vote in favour because I feel very much that in this debate we are trying to relive the debate that took place in 1993 when the previous amendment took place. The spirit in that debate, recorded in Hansard, was very much to try and improve the system that was there before. The debate was centred on the question of the length of time in tabling the Employment Survey but despite the statement made by the hon Robert Mor, the then Minister for Labour and Social Security, in which he said that the then Government would address that time in order to reduce it to have the information more readily available, the fact of the matter is that ever since then it has basically taken more time. If one looks at the October 1993/April 1994 Survey, it was tabled almost 16 months later; if one looks at the October 1994/April 1995 figures, it was almost 21 months later; if one looks at the October 1995/April 1996, it was 21 months later. One can argue that we have gone full cycle in this particular debate but things have changed, it is not exactly that we are going back to the situation, neither in 1985 or the situation in 1990/1991 because it is true to say that

1985, as I am informed by my colleagues in the Statistics Office, in those days they were working on cards, ledgers, everything was manual, that was the situation. Then, as we moved into the early 90s it was the first wave of computerisation that took place in Government Departments, but even the packages that were introduced at the time had a lot of teething problems and that is one of the reasons why they actually moved to try and do the Survey from the Income Tax submission records. The fact is that despite the intention of the then Government in 1993, it has not been possible and I am told by members of the Statistics Office that steps have been taken to really try and improve the situation both on the mechanical side and on the conceptual side of the actual Survey. On the mechanical side, in the sense that they have now particular software packages, particularly designed for the kind of exercise and survey that they intend to do and obviously we also know from the past that the response rate, when it used to be a Survey, was pretty high. On the conceptual side, the Leader of the Opposition might be aware that because of certain information that had to be taken out as a result of the previous amendment in 1993, we have been getting criticism, we, collectively in the sense from the ILO, because the ILO have been saying that they wanted the kind of information that because of the system, that prevailed in 1993 was not able to give it any further. By coming back to the Survey we will be addressing as well the kind of criticism levelled by the ILO but at the same time be able to share that further bit of information. I know, in that kind of design that they intend to do, that they will address those particular areas as well.

Gibraltar will not be doing anything different as a result of this than what is actually happening in the UK. Let us not forget that in the UK they have also an annual Employment Survey which is basically the equivalent of what the Statistics Office intend to do in Gibraltar. Something which really has never been applied, at least I am not aware of, is that as far as the Order is concerned, historically speaking, the Order has always said that if there is a delay of more than six months, that a statement should be made as to the reasons why such delay. The fact of the matter is that we have delays beyond the six months period but we have never had any explanations for such a delay. Obviously, one intends, in a positive spirit, that if there were to be any kind of delays beyond the six months, we would be able to know. We might be able to have a delay on this particular occasion given the fact that since we are

going retrospectively to the 1st October, obviously there might be a delay because they have not got the legislation in place so in the first one there might be a slight delay. It may well also be the case that this one, under the new system, might be able to be tabled here in the House even before the old one under the current system. That is something to take into account.

Mr Speaker, the hon Shadow Spokesman for Employment also raised the issue of the problems that we have had in Employment Surveys historically in relation to termination of employment and as a result of that why our figures, in our data bases in the Ministry of Employment are inflated as a result of the notice of terms of engagement not being handed over by employers. That is another issue which we are concerned and we will be doing something about it, particularly to be able to give both the Government, the Opposition, Unions, employers and the media, the opportunity of cross-referencing with other data bases to see, not exactly how much is the actual amount of people in employment or unemployment, but the actual trend as they follow from particular areas. The kind of thing that we will be doing from the Employment Survey side is, if one likes, a carrot and stick philosophy in the sense that as far as the 1st April from next year we will be introducing a system whereby it will be more employer-friendly by cutting down on the administrative side. We will be giving employers the opportunity to be able to get credits on a pro rata basis of the period during the particular year which will be an encouragement for them in terms of the financial side. The stick situation is, that when we are in a position to bring legislation to the House in relation to the employment offences regulations which we intend to do, one of the areas which will be attached to the schedule in terms of a fixed penalty fine amongst many other things will be the question of the termination of employment. So it is very much a question of doing an exercise to try and get our information as accurate and available and accessible as possible to be able to share ideas. We will have that opportunity as the Leader of the Opposition was saying of cross-referencing. I think that I have addressed those particular issues, and I could not add anything else other than what the Hon Robert Mor said in the previous amendment in 1993, it is that we ought to give it an opportunity to be able to see whether they can be able to produce the information as they intend and I know they will be giving a lot of priority to this so I think that I would try to appeal to Opposition Members to try and change their abstention and vote in favour. Thank you, Mr Speaker.

HON J L BALDACHINO:

The point he has not addressed, Mr Speaker, which I brought up was, is it the intention for monthly paid employees, for the information to be provided also on hours worked as the Explanatory Memorandum states or is it that that is not the case? For the accuracy of information, we will have to wait to see once they produce the information as a result of what they intend to do to the results that we had before. I do not want to abuse but I wanted to bring up the point, is it that the Explanatory Memorandum, the way explained was incorrect and that was not the intention of the Government or is it the Explanatory Memorandum is correct and it has not been included in Part 3 of the Schedule?

HON J J NETTO:

The information I have is that it has not been the practice in the past and it is not the intention to do it in the present or in the future either.

Question put. The House divided.

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

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

Absent from the Chamber: The Hon R R Rhoda
The Hon R Mor

The motion was carried.

BILLS

FIRST AND SECOND READINGS

THE PUBLIC SERVICES OMBUDSMAN ORDINANCE 1998

HON CHIEF MINISTER:

Mr Speaker, I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with two Bills.

Question put. Agreed to.

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to make provision for the appointment of an Ombudsman for the investigation of administrative action taken by or on behalf of the Government of Gibraltar and providers of certain services to the general public, to regulate the functions thereof, 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 responds to the Government's manifesto commitment to introduce a public services ombudsman into Gibraltar for the purposes set out in the Bill and which I will describe in general terms now. The Government believes that this Bill represents a radical development in the public administration of Gibraltar in the relationship between the citizen and the public administration of Gibraltar and will contribute immeasurably to the transparency and accountability which the public administration will be exposed to. The Government have already completed its exercise in ensuring public transparency of the administration in matters financial and this Bill is intended to achieve the same result in respect of other matters administrative. Notwithstanding, uninformed public comment to the contrary, this system, the regime established by the Bill is directly equivalent in almost every respect to the office and legislation supporting the office of ombudsman in practically every democratic Commonwealth country in the world. It is no more and no

less than that. It appears that some people do not know how to distinguish between courts of law, elected government and administrative ombudsmen. Those who think, by their public statements, that an administrative ombudsman is somehow the government in an acolyte form or that it is the courts in an acolyte form, then has not understood what the ombudsman is intended to be, what the ombudsman is everywhere else in the world and therefore what the ombudsman should be here in Gibraltar. To describe the office created by this Bill as a toothless tiger suggests either that the Bill has not been read or if it has been read it has not been understood or that if it has been understood it has not been understood in the context of the powers available to administrative ombudsmen everywhere else where there is an administrative ombudsman.

I think that we should also beware that we do not deprive our democratic institutions, in particular this House, of the functions that are attributed to parliaments in all other Commonwealth democracies and thereby diminish the democratic value of this institution. The ombudsman will be nominated by the Chief Minister. It has to be nominated by somebody but it is not an appointment made by the Chief Minister regardless. The appointment of the ombudsman, rather like all the appointments made, for example, by the US administration of importance needs to be ratified by this House. Therefore, ultimately the appointment is one which will have the approval of this House, hopefully by unanimity, that depends on whether the Opposition Members are content that the choice put forward by the Chief Minister genuinely is what the Ordinance obviously requires the nominee to be, that is to say, somebody in whom the whole community can have confidence regardless of partisan political considerations. This is how ombudsmen are appointed everywhere by support and sanction of the parliament. To suggest that the Parliament of Gibraltar simply because the Government have a built-in majority should not exercise that function is to diminish the statute of this Parliament. Governments, by definition have an in-built majority in every parliament. It is not impossible for there to be a minority government, but most governments in democracies enjoy majority support in parliament. That is what governments are in a parliamentary system.

Mr Speaker, the ombudsman will be a statutory office, independent of the government administrative machinery. He will have his own staff and his own budget, provided for by vote in this House. The staff will not be civil servants, they will be recruited separately. The removal

of the ombudsman before the expiry of his term of office will similarly need a resolution of this House. The Bill provides for wide powers of investigation and although usually an administrative ombudsman deals only with the public administration, that is to say, Government Departments, because so many functions which will have historically been Government Department functions in Gibraltar, have been privatised or commercialised, and citizens still look at them as semi-public services, quasi public administration services, this regime has been extended to all those authorities. Hon Members will have noticed that in addition to applying to all Government Departments and agencies, the public services ombudsman legislation will apply to all statutory bodies - the Gibraltar Health Authority, the Gibraltar Broadcasting Corporation, the Gibraltar Development Corporation, which obviously includes the Employment and Training Board, and the Tourism Board, the Development and Planning Commission, the Transport Commission and the Traffic Commission. It also applies to any company which provides on contract to the Government, or on licence from the Government, any of a long list of services to the general public. Therefore, it applies to all those companies that provide telecommunication services, water services, any company that collects monies, payable by the public to the Government, any registry operated by a private company, any company that provides public health control, environmental health control services, any company that provides clamping, towaway or traffic management, any company responsible for the cleansing of the public highway or the maintenance of public areas, the collection and incineration of refuse, any company that provides car parking services, any company that manages gardens, public halls, museums, air terminals and any other site belonging to the Government, any company that manages the Government's property interests, any company that provides immigration services of any sort; philatelic supplies, and any company that provides emergency and transport or ambulance services. It also has been extended to Calpe House in London operated by the Calpe Trust and to the Gibraltar Government Offices in London and Brussels.

Mr Speaker, the authorities whose administrative acts and omissions the ombudsman will be entitled to investigate using his very wide powers of investigation, are almost every organisation in Gibraltar that delivers an administrative or quasi public administrative service or utility to either the Government or to the public at large. Any person that has a complaint that is aggrieved by an act or omission of any such authority may lodge a

complaint. The Ombudsman may investigate all such complaints where a member of the public claims to have sustained injustice in consequence of maladministration in connection with action taken. It is important at this point to make perfectly clear because that is what an administrative ombudsman is, that everywhere in the world where there is an administrative ombudsman it is an ombudsman to investigate administrative acts and omissions. Ombudsmen, nowhere in the world exist for the benefit of assessing the merit of Government policy. It is how that policy is administered that ombudsmen exist. The people who decide whether the Government policies are to their liking or not is the electorate when they come to vote at elections. The idea that somehow one should have somebody unelected, over and above the heads of the elected Government, who somehow forces the Government of the day to alter its policies is an extraordinarily naïve concept which enjoys no precedent anywhere, not even in our neighbour, which apparently suddenly becomes an attractive comparison for some people.

Mr Speaker, I referred earlier to the substantial powers of investigation which the ombudsman has. This man, whom some allege is a toothless tiger, has... [Interruption] Yes, indeed, man or woman, hon Members should not thereby draw any indication of the candidate that the Government may have in mind for the first appointment. This so-called toothless paper tiger who exists apparently, who is alleged to exist mainly as a sort of imaginary propaganda exercise by the Government, has all the powers to call and cross-examine witnesses and to demand production of documents as are enjoyed by the Supreme Court of Gibraltar. The Government cannot endow an administrative ombudsman with more powers than it has done, namely, given them all the powers enjoyed by a court of law when conducting a judicial enquiry into matters, and to produce documents and that includes demanding that documents be produced by Ministers and it includes questioning Ministers, summoning Ministers to give evidence if necessary about matters of administration. I do not know if this is a toothless wonder or a toothless tiger or a propaganda exercise or not but if it is a propaganda exercise and if it is a toothless tiger, it is a jolly effective one to ensure transparency in the public administration. It is true that there are limits as there must be in any system of transparency to curtail the putting into the public domain of information which is against the public interest and which will serve no purpose in the interests of Gibraltar and arm Gibraltar's many detractors and opponents, but even in those respects there is no wide

power of censorship as has been said by those who have only given this Bill apparently a cursory reading.

Mr Speaker, not only are the powers to eliminate information from the report listed specifically but indeed when those powers are exercised the report has to say this particular information has been excluded for this particular reason. So although information is excluded in the public interest, there is transparency even in the exclusion in that the fact that it has been excluded and the reason why it has been excluded has got to be the positively and clearly stated in the report. Countries in the world, even the ones with freedom of information legislation, which this is not, but even those with freedom of information legislation, have restrictions about a small residue of information which would not be in the public interest to put into the public domain. I do not see why anybody should think that Gibraltar should be different to the rest of the world in that respect. The assurances available to the members of the public in dealing with the Ombudsman as to confidentiality are total. The Ombudsman will have a statutory responsibility to treat in confidence any information given to him by a member of the public who therefore need not feel that possibly any complaints to the Ombudsman the Government will know about, except to the extent that information will eventually find its way into the Ombudsman's Report.

Mr Speaker, the reports of the Ombudsman and ombudsmen all over the world, what they do is investigate and report because the purpose of an ombudsman is to expose the public administration to transparency and to pressure from transparency. The whole object of a public ombudsman is that by putting administrative incompetence, by putting administrative inefficiency, by putting administrative unfairness, sharply into the public domain, it makes it harder for it to happen and it puts the Government in a position where it has to explain all these things away and rather like the nuclear deterrents, the ombudsman system is designed to be precisely fundamentally a system of deterrence. The fact of the matter is that public administrators presumably will be less reluctant to treat people badly if they know that the result of that treating people badly is that they might find themselves mentioned in the next Ombudsman's Report. That is the purpose. It is not the purpose of an ombudsman to adjudicate, to eliminate the courts of Gibraltar as the place where citizens go to assert their legal rights and to obtain remedies. The whole system of public ombudsman is one in which administrative, in which

evidence of maladministration, whether positive or negative, whether by act or whether by omission maladministration is ventilated in public for the purposes that flow from that ventilation. Therefore, as is the case with ombudsmen all over the democratic parliamentary world, what this ombudsman must do, is file a report to this House. As the Ombudsman is not a member of this House, something that perhaps the House should consider when it reviews itself, whether the Ombudsman should be a member of the House, I do not say a Member of the House for the purpose of sitting in the House but as hon Members know in the United Kingdom several office holders are members of the House to the extent that they are able to come themselves to lay documents in the House as opposed to Members of the House like Mr Speaker and the Members of the Government and the Opposition. The Ombudsman cannot come to this House to lay the report himself, then the system that has been chosen, in common with other jurisdictions, is that the report is submitted to the Chief Minister who is statutorily obliged to bring it to this House and lay it within 60 days of having received it from the Ombudsman. It is appropriate, in the Government's judgement, that the Government should have an opportunity to consider the Report before it has to publicly defend itself as to its contents and that was why the 60 day rule is justified. The Report is entirely a matter for the Ombudsman but he is required by the legislation which the hon Members have before them, to include in his Report all his investigations, all the matters that he has seen fit to investigate and the results of his investigation and his recommendations.

Mr Speaker, in addition to annual reports the Ombudsman, it is entirely a matter for him, may publish special reports of injustices if he considers them sufficiently important to public special reports of and, of course, that Report also must be laid before this House. Needless to say, all Reports of all complaints go immediately to the complainant. This is not to say that the Annual Report goes to each complainant. If somebody makes a complaint at any stage during the year to the Ombudsman and the Ombudsman investigates that complaint his report about that complaint goes to the complainant as soon as his report is ready. Therefore, his full report is additional to the fact that individual reports have gone out to the complainant and when each individual report of each individual complaint has been prepared by the Ombudsman. To ensure that no one interferes with the carrying out of the work by this alleged toothless tiger there are criminal offences created of obstructing the Ombudsman in the execution of his duty equivalent to

those of obstructing a Police Officer in the execution of his duties, equivalent to those of interfering with the administration of justice when that is exercised by the Court.

Mr Speaker, the reality of the matter is that this Bill is a complete application to Gibraltar of every known modern principle of public administrative ombudsman, that he has all the powers available to him required to hold the public administration and all those other authorities that I mentioned earlier to account. Of course, it will depend on the skill and approach of the particular individual who is Ombudsman. Of course it will depend on the extent to which he is properly staffed and properly resourced but that is the case everywhere and that might be a criticism in due course that it happens of how the system works but certainly the criticism is not available from the simple reading of the Bill which says everything that it should say and contains everything that it should contain. I therefore have not the slightest hesitation in commending this Bill to the House as a radical modernisation of the rights of citizens as against the state in a modern western European democracy.

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, I think the Chief Minister should first of all have expressed his gratitude to the Liberal Party for their press release because otherwise he would have been left without a speech today since he has devoted 90 per cent of his contribution to the House to answering the only reaction that there has been to the publication of the Bill. Let me say that in evaluating the contents of the Bill, we have not come to the conclusion that it is a toothless tiger or tigress or a nuclear deterrent. It is clearly as legitimate to exaggerate its uselessness as to exaggerate its effectiveness which I think has been done today and which will need to await the implementation of the law and the complaints received and the action taken to see whether in fact it meets a need in our community and that the way that it has been done satisfied that need. I do not think it is enough to say "what we are doing is what everybody else is doing" or to say that "the President of the United States has to go to Congress" and that therefore this is the equivalent of Gibraltar. Even in my wildest dreams of grandeur of

which the Chief Minister used to accuse me of being the thirteenth member state, I never thought we were the second world power after the United States.

The law, of course, is not the exact parallel of the law anywhere else and it should not be. I think it is perfectly legitimate to look at what other people are doing and then to tailor-make things to our own requirements and size. It is not the case, of course, that in the United Kingdom the Parliamentary Commissioner makes an annual report to the Prime Minister from which the Prime Minister then deletes the bits that the Prime Minister thinks are not the public interest, that is not the case. The Parliamentary Ombudsman in the United Kingdom is covered by the Official Secrets Act and he can be asked not to make public documents with which he is provided by government departments on the basis that they have got defence implications or other matters affecting the public interest, but not after the event as I read it, before the event. It says "presumably" because that can mean providing information on an individual that the Commissioner of Inland Revenue can say "this document cannot be made public" if the document is provided to the Parliamentary Commissioner because it is a matter which the Commissioner of Inland Revenue has subject to the Official Secrets Act and the Official Secrets Act applies to the Commissioner. The report here does not follow that. I am just making the point because we have been told that everything that is being done here is what everybody else is doing everywhere else. If the Government of Gibraltar wish to have the annual report examined for possible dangers to the national interests of Gibraltar, which the Ombudsman might not have been conscious of and which the Government, in the exercise of its political judgement, considers that it is not in Gibraltar's national interest and they should be eliminated, then, of course, since they are there to exercise judgement and answer for it, then there is no reason why they should not do it but it is not the case, as I read the Ordinance, that the report will identify what has been taken out but simply that something that has been taken out, as I read it. The Report presumably will say "this is the full version" or "this is the edited version from which things have been removed in the public interest" but only the Ombudsman and the Chief Minister will know what is the thing that was there originally which, according to the Chief Minister, but not according to the Ombudsman, would not be in the public interest to mention. Obviously, it would be possible in the House to try and seek more information as

to what it is and why the public interest would be harmed by information being provided.

I am not sure that this is what people have been looking for when they have said they needed or wanted somebody to redress grievances. It may well be that we find that what works in a nation state with these constraints will not work in Gibraltar and that the Ombudsman may find that a lot of the things that he gets asked by people to look into he will not be able to look into. I think we will have to see how it works in practice before we see whether the terms of reference which have been provided in the law are going to meet a need from the public for protection against the application of administrative actions which they feel lead to an injustice, because at the end of the day this is not about information, this is not about transparency, this is not about people knowing more about how the system works, it is about people feeling that the system is failing to work. That is what they complain about, they complain because they have got a grievance, because they feel that either they are not getting the service they are entitled to expect or they are not getting the attention that they are entitled to expect or they are being shifted from pillar to post. That is the kind of thing any Member of this House knows, that that is the kind of thing that the public complains about because we have been effectively the ombudsman in this House for years. That is what people come to the House to complain about. If in fact this, in addition to the continuing right that people will have of course, to approach Members of the Opposition and, indeed, Members of the Government when they feel that Departments are not giving them the service, members of the Government get stopped in the street and they are told so by citizens and they are in a position, I think, in a way which is not available to citizens elsewhere. They are in a position to go back and do something about it straightaway, so I think we have got a level of accessibility in Gibraltar's political system from the average citizen that enables things to be redressed quickly if there is a genuine case to be addressed. Clearly, if this provision is now going to produce an enhancement to that system, a more effective way of doing it, then it will be something that it will be seen to be functioning like that and I think it will be something that will be welcomed. At this point in time, we are not either rushing to welcome it or criticising it before we see how it works. I think we will reserve our judgement until we see it operating in practice.

HON K AZOPARDI:

Mr Speaker, I just wanted to make a brief intervention in support of some of the things the Chief Minister said, but perhaps I could first deal with some of the things the Leader of the Opposition was mentioning. I think there is a distinction to be made between the decision taken by the Opposition Party outside this House which I think is fundamental and misconceived and I intend to address it and the rather more sensible approach taken by the Leader of the Opposition to reserve judgement on this matter. Essentially, that should be the approach taken. We have looked at models in other jurisdictions to try to assess what model should be adopted in Gibraltar and we have looked at the concept and the powers and remedies that other people have in other jurisdictions and we have adopted a broad concept of it. The people who have drafted the legislation have drawn from various legislative sources so it is true that the Leader of the Opposition analyses the legislation. One will not see an exact transposition of, say, the Parliamentary Commissioner Act, because it is not intended to be that because, of course, the powers of the Ombudsman in a place of 50 or 60 million may not relate to a community of our size and so those who have drafted the legislation have also looked at smaller communities. The Maltese legislation, for example, has been utilised also in that process. I have had a conversation with the Maltese Ombudsman. Malta, admittedly, is more of a size to which we can relate even though it is much larger than us. The population is 300,000 and so the Maltese Ombudsman, who used to be the Permanent Secretary in the Office of the Prime Minister there, tells the same anecdotes of people stopping Ministers in the street, of people stopping the Ombudsman in the street, the people going to the house of the Ombudsman to tell him about a problem. We have used different legislative sources and we do not pretend to think that this is going to be a panacea but we intend it to be a good step forward to address what we think what the community desires and indeed a good solution to what the community was looking for.

I want to address myself to the concept of the Ombudsman. There has not been sufficient public debate on this and I am not sure if people in Gibraltar are aware of the intricacies of the powers that other ombudsmen in other jurisdictions have so I want, for the assistance of anyone who is listening to this debate, to perhaps just cite a couple of paragraphs from a couple of reports I have got with me, so that it is clear what the ombudsmen in other places can and cannot do and with your

indulgence, Mr Speaker, if I can first refer myself to the report of the Maltese Ombudsman when he talks about the concept of the Ombudsman and addressing myself to the point of the Leader of the Opposition of "will this deliver what the community wants?", he says and I will adopt his paragraphs, "representation is a fundamental value in a democratic society. Therefore, citizens expect those who exercise power in their name and over them, to be accountable for their actions. Modern democracy seeks more than an electoral rendering of accounts. Given the size of Government, power and authority are shared among Ministers, Members of Parliament and public administrators. It is not enough that officials can be asked to render accounts to parliamentary committees. For a stable relationship between the Government and the public, the Government must display a degree of transparency and direct responsibility towards the people who are entitled to know, to understand and to assess its decisions. It is said that the Ombudsman serves as a thermometer of public administration. The complaints received from the public reflect the degree of satisfaction given by public agencies in meeting the people's expectations of improved Government services. As a critical collaborator, the Ombudsman provides guidelines to agencies for improving their service. The institution also serves to cultivate the necessary trust and confidence between the Government and the governed, which not only improves the health of a democracy but also improves the quality of life."

The concept of the Ombudsman that we intend to introduce into Gibraltar through this statutory vehicle really is meant to deliver that to people. A check on the Government and we will have to see how it works in practice. The Ombudsman is empowered to look at maladministration and now, and I appreciate that maladministration is a concept perhaps difficult to grapple with, defined in the courts but not specifically defined elsewhere, but I think it would be useful to direct our minds to what that means. The Health Service Ombudsman's Report or Explanatory Booklet defines maladministration as this, it refers to the fact that it is not defined in statute and then remarks that the relevant Government Minister at the time of the passing of the Parliamentary Commissioner Act 1967, indicated that it would cover bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude, arbitrariness and so on. A lot of the things that the Leader of the Opposition has said, the passing the buck and so on, that all falls within that same definition. In his Annual Report, the Health Service Ombudsman in the

UK added to that list rudeness, unwillingness to treat the complainant as a person with rights, refusal to answer reasonable questions, neglecting to inform a complainant in respect of his rights, knowingly giving advice which is misleading or inadequate, ignoring valid advice or overruling consideration which would produce an uncomfortable result for the overruler, offering no redress, showing bias, omission to notify those who lose their right of appeal, faulty procedures, failure by management to monitor compliance with adequate procedures and a cavalier disregard of guidance which is intended to be followed in the interests of equitable treatment of those who use a service. That is what maladministration means. Maladministration is not taking a view on specific aspects of government policy. It deals with the treatment of the individual at the floor level by specific public officials and public servants and that is what it intends to address.

The Ombudsman in Gibraltar will have wide powers. He will have wide powers as the Ombudsman does in Malta and in the United Kingdom. He will have the powers to summon people that a Judge at the Supreme Court has, that is the same power that the Health Service Ombudsman, for example, has in the United Kingdom, powers for someone to summon evidence and request evidence in the same powers as the High Court of England and Wales, the Maltese Ombudsman has similar powers to request information and summon people to give evidence. Those are very wide powers. At the end of the day we are the elected representatives of the people. When I say we, I include the Opposition as well and the fact that someone external that is appointed by this House has the power to summon us to give evidence and request and we cannot refuse to give information is, I think, a very wide power indeed to give to someone external to this House and it is a question of constitutional accountability because he will be ratified by this House and so therefore he will be the representative elected by the elected representatives.

Mr Speaker, I just wanted to say a couple of things on remedies that the Ombudsman has. The Ombudsman, wherever I have seen it, I have not trawled through every single piece of Ombudsman legislation or every single Ombudsman report, but wherever I have seen the office of the Ombudsman I have seen that he has the power to make recommendations and not to enforce those recommendations. I think that is an important distinction to make and people should be aware of that distinction. The legislation in Malta has been described as very progressive by the former Chief Ombudsman of New Zealand

and New Zealand and Denmark were two of the countries that first introduced this concept. In relation to remedies themselves, as I say, it is clear from the report, for example, of the Health Service Ombudsman in the United Kingdom, that the Ombudsman can ask for an apology to be made but that the NHS body, as the health service provider, need not act in respect of the recommendation. The only power that the Health Service Ombudsman has is, and I quote from his report "if it appears to the Ombudsman after conducting an investigation that the aggrieved has suffered an injustice or hardship which has not been and will not be remedied the Ombudsman may lay a special report before both Houses of Parliament clearly envisaging the fact that people may ignore that report". The reality is, of course, that that does not happen. The reality is that public embarrassment for governmental institutions is the most powerful weapon that someone can have. To illustrate the same point and if I can refer to the Maltese Ombudsman's Report which I rely on quite heavily because of the comparative size comparisons that I make with Gibraltar, and I quote from his report, he says, "Addressing Government's deficiencies may take the form of a recommendation to correct the particular action. The Ombudsman has not executive powers. His mandate is to make recommendations and Government is free to accept or reject such recommendations. The experience in countries where the institution has been long-established is that non-acceptance of a recommendation is exceptional." Mr Speaker, the same point is made in the leaflet of the local government Ombudsman in the United Kingdom where, and I cite from that leaflet, it says "in most cases where the Ombudsman finds injustice, councils remedy the grievance of the person who complained. Sometimes a council response does not satisfy the Ombudsman. The Ombudsman then issues a further report saying what should be done. The council must consider this Report and say what they intend to do. The Ombudsman cannot force a council to act if they decide not to but can arrange for a statement to be published in a local newspaper about the council's refusal. I am sure that will make the council act." My final example, Mr Speaker, is citing the leaflet of the Parliamentary Ombudsman in the United Kingdom when he says that "the powers of the Parliamentary Ombudsman are to recommend redress if he finds a complaint justified by asking the government department or other body concerned to put right anything he finds wrong. That includes, where appropriate, a financial remedy. His recommendations are almost always put in practice. He has no power to stop a department taking an action, only a court can do that".

Mr Speaker, I hope I have illustrated to Opposition Members and to this House the wide powers that the Ombudsman will have in this statutory vehicle which draws from legislative sources from which we can relate and I hope that I have also illustrated to this House the remedies that people have in other jurisdictions in relation to ombudsmen. There is a power to make recommendations, not a power to enforce, but that is a powerful weapon. Mr Speaker, the tiger or tigress created by this statute does not require dentures. He or she will have perfectly good teeth of his or her own. Public embarrassment is the largest weapon that someone can have to make a government act and I think that will be achieved by this Ordinance.

HON CHIEF MINISTER:

Mr Speaker, I am sorry that the Leader of the Opposition should have had to draw the distinction that sharply between himself and the Liberal Party but he will forgive us for the fact that it is becoming increasingly difficult to distinguish between the views of both parties. It now requires a very careful examination of press release letter headed paper to know when one party is speaking by himself and when both parties are speaking together. The distinction between the two parties are far from sharply focused these days.

Mr Speaker, I hear what the hon Member says and it is a valid distinction. Indeed, it is a distinction that I thought to make between the effectiveness of the legislation and the effectiveness of how the legislation might be made to work once it gets up and running. It is not that I exaggerated the effectiveness of the ombudsman system, that would be the second bid which we both agree needs to be seen. What I did was to extol the virtue of the legislation which I did not exaggerate. The legislation says everything that it needs to say for the system to work as well as any such system can make and therefore there was no question of my exaggerating the effectiveness of the legislation. I was not exaggerating the effectiveness of the legislation. Everything that I said is a fair comment about the effectiveness of the legislation. What I was drawing the distinction is between comments on the legislation which cannot be exaggerated and comments by others about how it might work or might not work which is not what they have sought to do but which the Leader of the Opposition has more fairly distinguished between and that is the legislation

which, frankly, is pretty standard vanilla flavour in terms of such system.

Mr Speaker, just for the record and I would not want the hon Member gradually to change the record by any unfair means in this respect, he did say, I am sure it was a slip of the tongue but he did say, referring to me, he said "when the hon Member used to accuse me of being the thirteenth member state..." Let us be clear, it was the hon Member himself that used to say that Gibraltar was the thirteenth member state. We used to spend our time pointing out to him that in fact this might not be true, in fact it was not true, but the only chap who went strutting round the world saying that Gibraltar is like the thirteenth member state and then eventually dropped the "like" word which at least offered some element of defence and just uttered asserting that it was the thirteenth member state was him. The hon Member will recall that the Opposition used to take a different view on him on that issue.

HON J J BOSSANO:

The point I was making is that even I never sought to compare the office of the Chief Minister of Gibraltar with no other than a President of the United States which he did in the context of the Bill. Even when I used to say we were the thirteenth member state, I never thought we were the second world power, that is the point that I made.

HON CHIEF MINISTER:

Mr Speaker, if I had compared Gibraltar to the United States I would not have been suggesting that we were the second world power, I would have been suggesting that we were the first world power, which is what America is. In any case, I am sure the distinction must be obvious even to the hon Member between saying we are the thirteenth member state and saying, in answer to criticism of the way we choose to make an appointment, this is not an unusual system. There are other leading democracies in the world where office-holders are nominated by the executive and ratified by the legislature, for example, the United States of America. I do not think the hon Member can reasonably draw the inference from that, that I am comparing myself to President Bill Clinton or that I think that he is the equivalent of the minority leader in the House of Congress neither of which is a reasonably drawable inference from anything that I have said.

Returning now to some of his serious comments, the hon Member in making his comments on this business of the public interest and exclusion of material by reference to the public interest, he said "that of course it remains to be seen why something might be in the public interest according to the Chief Minister but not according to the Ombudsman", that is what he said. It is not a correct formulation because it is not that the Ombudsman himself has a duty to take into account whether the publication of material is or is not in the public interest so that if he thinks it is not in the public interest he can leave it out but if he thinks it is then he can put it in and then along comes the Chief Minister and says "I have a different view". This is not a competition of judgements between the Chief Minister and the Ombudsman about what is in the public interest or what is not. There is no contest. The public interest is not a criteria that the Ombudsman is required to take into account at all and therefore he will not have exercised any judgement on that and the fact that the Chief Minister exercises his judgement in deciding that publication of something is not in the public interest is not a contrary view to the one that may have been exercised by the Ombudsman because the Ombudsman will not have exercised a judgement or come to any view about whether publication is in the public interest or not. More specifically, the hon Member said that the act of exclusion would be put in the report but not what it excluded. Mr Speaker, obviously if one had to give full details of what had been excluded one might as well include it. What the Bill says and I think it is worth reading out this section, just for the record, it is on page 659 of the Bill, at the bottom, section 20 subsection (5), "In the event of the Chief Minister directing the exclusion of any material in the Annual Report pursuant to subsection (4)..." that is to say in the public interest, "...the Annual Report shall, nevertheless, contain a reference to the investigation and the fact that material has been excluded pursuant to subsection (4) on the ground of public interest at the direction of the Chief Minister pursuant to the section". The Ombudsman would say "I investigated whether the..." I cannot give an example because somebody might take offence, but "I investigated this or that issue, the results, I have the report but material..." it is not that he cannot report on it at all, this is excluding material, not excluding reports, so from his Report he might have to exclude some material, not the whole Report, which is against the public interest and then would say "and I have been directed by the Chief Minister, under subsection (4), to exclude material from

this part of my Report, in the public interest". It is not possible to give more indications than that of the fact that this power of exclusion has been exercised without actually going on to give details of what the exclusion is. The hon Member asked, rhetorically, in a sort of reviewing attitude, whether the Ombudsman will be able to look into things that people want looking into. Mr Speaker, the Ombudsman is not supposed to be the panacea of everybody's problems. The Ombudsman legislation is not designed to eliminate everything that is wrong with the system of government in Gibraltar. It is designed to be a very substantial contribution, a very large piece of the jigsaw that will eventually radically improve that system. Notwithstanding the Ombudsman doing this job, there may still be matters about things which people will have to continue to complain about. He who has sat on this side of the House for eight years will be aware that very often people define a grievance, an injustice, at not having got the result that they wanted. Of course, the Ombudsman is not there as an appeal court to review a decision taken by the public administration on application by a citizen. Therefore, to the extent that people are aggrieved that they have not got what they asked for, that is not a grievance for the Ombudsman. What would be a legitimate grievance for the Ombudsman to look at is if people thought that their application had not been heard properly or that their matter had not been dealt with according to law or that their matter had not been given proper and full efficient sensible and courteous consideration. The procedural aspects, the administrative aspects of it. As to whether it is an enhancement, the hon Member said it remains to be seen whether it is an enhancement. Mr Speaker, I think it must be an enhancement. It has been an enhancement wherever else the system has operated with similar powers and of course the great advantage that the Ombudsman has over, for example, Opposition Members of the House is that the Ombudsman has the power to get answers, to go beyond answers, because the hon Members can get answers in the House, factual answers to their questions but then they have to accept the answer as it is given. Whereas, the Ombudsman can say "look, this answer is not persuasive, I do not think it is right". I can be cross-examined and can summon civil servants to cross-examine them and say "now produce your file of correspondence, I want to see your file, I want to see why, for example, it took the lady with her planning problem in New Passage, whose name I will not mention in the House, why it took her two years to get anybody to look at her place." There is no fobbing off to be done there by the public administration because he has the

power of investigation whereas Opposition Members only have the power to ask questions in Parliament.

Mr Speaker, it is bound to be an enhancement, not just in the resolution of particular grievances, of particular citizens in a particular case but it is bound to be an enhancement in the approach of public administration. This is what I meant by the deterrent approach, it is bound to have an enhancement in terms of the approach that public administrators will in future have to the way they deal with the public, because they now know that it is not just their superior who can call them to account, but indeed it is a public statutory officer, official, exercising statutory powers through a Report that will be made public. Therefore whilst obviously all good systems, however, well designed, just as here we are legislators in this room, we are not in our present capacities administrators and therefore all we can do is to ensure that the legislation is adequate, is correct for the purpose. Like all things they can be perfectly well designed and then in its implementation it is not as effective as the legislation enabled it to be and I think that is a matter in which it would be legitimate, not just for the Government but indeed for Opposition Members to keep an eye to see that this system operates as parliament expects it to operate on the assumption that the hon Members will support the Bill. I give way to the hon Member.

HON A ISOLA:

Mr Speaker, there is just one question. The Chief Minister said earlier on that the complainant would receive an individual report as opposed to the annual report. The power to exclude material which may not be in the public interest in the view of the Chief Minister under clause 24 seems to limit itself to the Annual Report, does in fact that power extend to the individual complainant's report which he will receive, assuming at the conclusion, of the investigation? What will happen to that Report? Will that Report contain those exclusions? From the reading of the Bill it seems that the power to exclude material is limited to the Annual Report but I assume that the Annual Report comprises the individual reports. The Clause says "that the Annual Report consists of a report of...". So it is not a full report, it is a report of the report, a summary I assume?

HON CHIEF MINISTER:

Mr Speaker, I would have to look at the draft to see whether there is some drafting error there. The intention obviously is that the omission should be from both reports because once it is delivered to the individual citizen, he is then free to put it into the public domain and that would simply defeat the issue. It has got to be clearly understood that the public interest is very different from the interests of the government of the day. When the legislation speaks of it not being in the public interest for something to be put into the public domain, we are talking about things which damage Gibraltar, not things which damage the party in government at the time, not things which damage the political prospects or the electoral prospects of the government of the day, we are talking about things related to the public interest of us all in Gibraltar just as in the past the hon Members with the support of the Opposition when they were in Government, withheld the publication of statistics in one or two areas and we continue to do it because we recognise, as they recognised at the time and we supported them at the time, that that information in the public domain would not be used for any innocuous purpose, it would simply be used by Gibraltar's enemies to do battle against us in an unfair way. That is what is meant by the public interest and of course it is entirely legitimate for the hon Members to ensure that this power is used for that purpose and similar purposes and not to protect the government of the day from the publication of information which may just be politically uncomfortable to the government of the day but actually does not raise any matter of national public interest. I do not think the hon Members should assume that because a power exists for perfectly good national reasons, that they should criticise its existence simply because it is capable of being abused. Every reasonable power is capable of being abused if the holder of the power is so minded and no one exists to hold him to account for it.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

Mr Speaker, I will need to leave one Bill on the agenda just for a few more days before this meeting of the House finishes. I can indicate to the Opposition Members that the House will adjourn until the 17th December, at which

time I envisage it concluding. Therefore, one of these three Bills needs to stay behind. If the hon Members prefer it, I am very happy to take all the further stages of this Bill today but if the hon Members prefer it I do not mind leaving this one until the 17th to discuss the Committee Stage otherwise I would leave one of the others. Perhaps we can test it this way I would say that I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today and the hon Members can answer.

HON J J BOSSANO:

We Agree.

Question put. Agreed to.

**THE DRUG TRAFFICKING OFFENCES ORDINANCE 1995 (AMENDMENT)
ORDINANCE 1998**

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Drug Trafficking Offences Ordinance 1995, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the purpose of this Bill is to amend the Drug Trafficking Offences Ordinance 1995, in a number of ways but really do not more than rectify errors and clarify ambiguity in certain language. I do not believe that any of the amendments proposed have the effect of altering the legislative regime in any substantive way. Clauses 3 and 4 amend section 2 by correcting a minor drafting error in the definition of the word "satisfied" and by clarifying the language in the definition of the phrase "subject to appeal". The definition of the word "satisfied" as it presently stands in the Bill refers to subsection 16 whereas it should read "subsection 16(b)" and the amendment has the effect of introducing the "(b)". The amendment to the definition of the phrase "subject to appeal" is to eliminate what really is nonsensical language in that it presently reads, "subject to appeal" in relation to an Order means disregarding any powers of a court to grant

leave to appeal out of time that there is no further possibility of an appeal on which the order could be varied or satisfied. Whereas the definition that it now introduces is an order is subject to appeal until disregarding any power of the court to grant a leave to appeal out of time, there is not further possibility of an appeal on which the order could be varied or set aside. It is really a semantic amendment to ensure that the proper meaning as intended originally is clear.

Mr Speaker, clauses 6 and 8 amend sections 27(3) and section 37 respectively by substituting a reference to section 9 of the same Ordinance that is a reference to section 11 for section 9. At the moment the law in those two sections erroneously refers to section 9 whereas the reference should be to section 11 of the Ordinance. Clause 11 amends section 68(1) by consolidating paragraphs (a) and (b) and does not alter their sense. Then there is an amendment to section 60 which is designed to eliminate a duplication in sub-paragraph numberings and subsequent renumbering of sections as a result of what is a duplication of numbers. I believe that the hon Members may be in a position to agree that what this Bill raises is a tidying up exercise and introduces no changes of principle or of substantive provision into the original Ordinance. I therefore commend the Bill to the House.

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

HON A ISOLA:

Mr Speaker, we would agree that the changes proposed in the Bill, with the exception of one and which we want to consider them further, they are in fact tidying up and correcting anomalies and errors from its First Reading. The part that I am referring to is clause 11 which in the Explanatory Memorandum it states that finally clause 11 amends section 68(1) by consolidating paragraphs (a) and (b). Not understanding the reason for the need to consolidate (a) and (b), but putting them aside, there is a reference in section 68(1)(b) which reads "giving effect to any other relevant legislation of the European Union" and in the Bill we have "giving effect to Council directive or any other Community obligation". We do not know why there is that change in the language if one is consolidating the two we do not understand why there has been a need to change the language and we would frankly be happy with what was there before which is the relevant legislation of the European Union. It would seem that

the interpretation that has been given to Community obligation could extend, why then the relevant legislation of the European Union and so what we would seek to do and bearing in mind that the Chief Minister asked as to which Bill we would prefer to leave over, we would proposed to make an amendment to clause 11 of the Bill to put back in the words "relevant legislation of the European Union" in lieu of "Community obligations" and we could give notice to Government of that proposed amendment which would give them then time to consider the amendment and perhaps determine why there has been that change in the language. Apart from that we have no difficulty in supporting the Bill.

HON CHIEF MINISTER:

Mr Speaker, I have to say I do not understand in the existing legislation the reference to giving effect to any other relevant legislation. Legislation of the European Union is directly applicable. The word "legislation" means regulations of the European Union. The other thing that there could be is directives and then I would use obligations as opposed to legislation which would require some legislative act here in Gibraltar, whether primary or subsidiary legislation. Mr Speaker, giving effect to Council directive or any other Community obligation on the prevention of the usual financial system for the purposes of money laundering, I am happy to leave this Bill over but I just do not see, perhaps the hon Member if I give way to him could explain why he thinks one is relevant. What is the difference between relevant obligation and simply spelling out what relevant means which is use of financial systems for the purposes of money laundering. The Ordinance is about money laundering and therefore relevant legislation, which is a phrase used in the existing legislation, has got to be legislation relating to that. One is a generic term, the other specifies the generic. I think the use of the words "relevant legislation" in the print is probably accurate but I am happy that we should further discuss this.

HON J J BOSSANO:

Our concern is that the change in the wording may, unintentionally perhaps, lead in the future to somebody coming along with "obligations" that are not legal instruments in terms of standards, or code of conduct, or whatever, where the exercise of choice on the Government may be constrained inadvertently by a change in the terminology and therefore as we see it, what was

originally agreed was that if there was a legally-binding requirement on Gibraltar, that legally-binding requirement would be transposed into our national law. I am not sure that the words "of a Community obligation" have got the same rigid limited meaning as a "legally binding requirement". If it has not then if it is not the intention to widen the scope of the original provision, then what we are suggesting is that it is safer to stick with the original provision. In any case, what we are signalling at this moment is that that is the one element where we can see a difference between what was there before and what is here now which may contain a possible matter of substance and that is why we are drawing attention to it.

HON CHIEF MINISTER:

Mr Speaker, if that is the hon Member's hypothetical concern, I am very happy to immediately accommodate it by adding the words, when we come to Committee Stage, amending it so that it should read "Community legal obligation" and not just "Community obligation" and thereby making it clear that this is not a device by which others who might be able to publish subsidiary legislation other than the Government, presumably the hon Member would not mind the Government doing it, so that others could not use this means to legislate non-legally binding, for example, politically binding but not legally binding. The word "obligation" does not necessarily, by itself, imply mandatory legal. It could be a political obligation, it could even be a moral obligation and therefore if that is the point the hon Member is making I think it is well made and if he thinks that adding the word "legal" which is what I intend certainly, that is all that I would expect the Government to be achieving by this, then I am very happy that either he or I should move an amendment to add that word.

HON J J BOSSANO:

Mr Speaker, can I just say that it is not that others may do it but the point we are making is that if it is capable of any interpretation other than the narrow one that it is a legally binding requirement of the Government, then the Government might find itself in a position of being asked to do something on the basis that the law that we have passed in this House places them in that situation. It has not been unknown to happen and therefore we are simply pointing it out so that we pre-empt any possible risk of that developing. Therefore, it is along the lines that the Chief Minister has responded

that our thinking is going and we hope that we can put it right at the Committee Stage.

HON CHIEF MINISTER:

Yes, I am perfectly content to go along with that Mr Speaker. Of course, the hon Member does not sufficiently distinguish between what the House is asked to do and what the Government is able to do. The fact that the Government have available to it the legislative mechanism to do something does not compel it to agree to use the power when it is not bound to do so. The hon Member has heard the Government, for example, in relation to the tax code where we have said we acknowledge the United Kingdom's entitlement to ensure that Gibraltar complies with its legally-binding international obligations but the tax code is not such an obligation and therefore the Government of Gibraltar do not consider itself bound by it and have not accepted it. It will not implement it and therefore the existence or not of a legislative mechanism to do something is not the factor that determines whether a Government of Gibraltar, the last one, this one or the next one, is able to resist external pressure to do what it does not otherwise want to do. I think the resisting of the pressure has got to be done in another basis and we cannot just say we are not doing that because section 68(1) of the Ordinance does not allow us because we will just say "introduce a new Bill in the House" or something. Having said that, I think it is a legitimate observation, Mr Speaker. I think it is important that Gibraltar continues to distinguish between legally binding international obligations and obligations of other types because I think our constitutional ground is different in respect of the different categories.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

MR SPEAKER:

I thought you were going to leave that to the 17th?

HON CHIEF MINISTER:

I would have left the Insurance one. I thought that we had disposed of the proposed amendment and therefore we could safely assume...

Question put. Agreed to.

COMMITTEE STAGE

HON CHIEF MINISTER:

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

The Public Service Ombudsman Bill 1998.

The Drug Trafficking Ordinance 1995 (Amendment) Bill 1998.

THE PUBLIC SERVICE OMBUDSMAN BILL 1998

Clauses 1 to 23 were agreed to and stood part of the Bill.

Clause 24

HON CHIEF MINISTER:

Mr Speaker, not to propose any amendment but just to deal with the point raised by the Hon Mr Isola in relation to the distinction between exclusions from the annual report as opposed from exclusion. I think he will find that section 23 would enable any exclusion that would need to be made in the public interest to also be excluded from the report transmitted to the individual complainant.

HON J L BALDACHINO:

Mr Speaker, does that mean that when the Ombudsman makes a report which will then go to the person who has made the complaint, does that mean that all reports will then go to the Chief Minister?

HON CHIEF MINISTER:

All the reports come to the Government because the Government are one of the parties to the complaint. Most of these complaints will be against the Government so the Ombudsman will investigate the matter and will send a

report to the complainer and a report to the party complained against. It is not the case that the Ombudsman requires that all the reports be cleared prior to dealing with the reports, sending it to the complainer. The Government will know during the content of an investigation what areas touch on issues which... and will enter any public policy reservation, any public interest reservation, at that stage.

Clause 24 was agreed to and stood part of the Bill.

Clauses 25 and 26 were agreed to and stood part of the Bill.

The Schedule

HON CHIEF MINISTER:

Mr Chairman, in respect of the Schedule, under "Other Bodies" it refers to the Gibraltar Government representative office in London and Brussels. Of course, there is now an office which is not a Gibraltar Government office but a Gibraltar Development Corporation office in Madrid and therefore it is clear to the Government that that would also be covered because the Gibraltar Development Corporation, in all its functions, is covered particularly the Tourist Board, even though that is not an office.

The Schedule was agreed to and stood part of the Bill.

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

THE DRUG TRAFFICKING OFFENCES ORDINANCE 1995 (AMENDMENT) BILL 1998

Clauses 1 to 10 were agreed to and stood part of the Bill.

Clause 11

HON A ISOLA:

Mr Chairman, I propose an amendment by inserting the word "legal" after the word "community" in line 2 of paragraph (a).

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

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

THIRD READING

HON CHIEF MINISTER:

I have the honour to report that the Public Service Ombudsman Bill 1998 and the Drug Trafficking Offences Ordinance 1995 (Amendment) Bill 1998, have been considered in Committee and agreed to with amendment and I now move that they be read a third time and passed.

Question put. Agreed to.

The Bills were read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

Mr Speaker, I have the honour to move that this House do now adjourn to Thursday 17th December at 10 o'clock in the morning.

Question put. Agreed to.

The adjournment of the House was taken at 12.10 pm on Thursday 3rd December 1998.

THURSDAY 17TH DECEMBER 1998

The House resumed at 10.05 am.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon P C Montegriffo - Minister for Trade and Industry
The Hon Dr B A Linares - Minister for Education,
Training, Culture and Youth
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 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 J Isola
The Hon J J Gabay
The Hon J C Perez

IN ATTENDANCE:

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

CONDOLENCES

MR SPEAKER:

There is an empty seat in the House today. The seat belonged to the Hon Robert Mor. He is no more. We miss him today and we will miss him for many, many years. He was a good man, that is the highest praise anyone can receive. I am sure all the Members of the House will want to join me in recording in Hansard our condolences to his wife Carmen and to his family.

HON CHIEF MINISTER:

Yes, Mr Speaker, in associating everybody on the Government Bench with your words, I would just refer Members to the statement that the Government have already put out following the death of our Colleague Robert Mor in which we have fully recognised the significant contribution that he has made, not just to the conduct of Gibraltar's affairs during the eight years that he was a Minister, but indeed to its parliamentary affairs as a Member of this House. I think for many reasons politics in Gibraltar gets intense, very intense, and I think that perhaps amongst all the Members of this House, Robert Mor was a man who never lost his sense of humour and he never lost his good nature, regardless of the extent to which he found himself involved in partisan political exchanges. I imagine that with that nature and that commitment he must have been a valuable attribute to the Party of which he formed a part. He was the sort of loyal foot soldier that every political party needs if it is to be in a position to maintain its organisation, its cohesion and its commitment to its political ideology and philosophies. I believe notwithstanding the significant differences that separated us politically, that Gibraltar, and this House, will be the poorer for his loss and in a sense Robert Mor typifies the commitment to Gibraltar and its interests which has to be the hallmark of every Member of this House whilst we face threats from abroad.

HON J J BOSSANO:

Mr Speaker, I appreciate the words that have been said in respect of our Colleague. Clearly, on this side of the House we have been devastated by the sudden loss of a dear friend, that has been with us virtually since the Party was formed. He has served in the House since the 1984 Election, in Government after two elections in 1988 and 1992 and again in Opposition since 1996 and, indeed, his approach to political controversy in retaining a sense of balance and a warmth towards people with whose views he might not have agreed, has been there all the time. He attended the House of Assembly on the 13th November and I think that it is the first time that within the sitting of a meeting of the House we suddenly find ourselves with the absence of somebody and that suddenly brings home to all of us just how tenuous the link with life is and how vulnerable we all are. It will take us a long time to get over his loss and I appreciate the words that have been said. He deserves that kind of praise and much more. Thank you, Mr Speaker.

MOTIONS

HON CHIEF MINISTER:

Mr Speaker, I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with Government motions.

Question put. Agreed to.

HON CHIEF MINISTER:

I beg to move the motion standing in my name and which reads as follows:

"This House -

- (1) Notes that the salaries of Members of the House were Set in 1979 at a reduced percentage of the salary attributable to the offices of the Attorney-General and the Financial and Development Secretary (currently £54,901) as follows:-
 - (a) The Chief Minister at 75% of that salary (ie currently £41,175)
 - (b) Ministers at 50% of that salary (ie currently £27,450)
 - (c) The Speaker and the Leader of the Opposition at 37.5% of that salary (ie currently £20,587)
 - (d) Other members of the House at 25% of that Salary (ie currently £13,725).
- (2) Notes that the said reductions were intended, principally to reflect the fact that Members and Ministers were not full time.
- (3) Considers that Ministers, who now work a full day on the conduct of public affairs, should receive a salary that reflects that fact.
- (4) Considers that the salary of members of the House (including the Speaker but excluding the Attorney-General and the Financial and Development Secretary) should be composed of a salary attributable to membership of the House (to be known as "a Member's salary") and in the case of the Chief Minister, an additional salary to be known as "Chief Minister's

salary", in the case of a Minister, an additional salary to be known as "a Ministerial salary", in the case of the Speaker, an additional salary to be known as "the Speaker's salary", in the case of the Leader of the Opposition, an additional salary to be known as "the Leader of the Opposition's salary".

- (5) Resolves that the salaries payable to Members of the House (excluding the Attorney-General and the Financial and Development Secretary) be structured and fixed with effect from 1st January 1999 as follows:
 - (a) All Members of the House, (including the Speaker but excluding the Attorney-General and the Financial and Development Secretary), a Member's salary in the sum of £15,000 per annum.
 - (b) The Chief Minister an additional salary (the Chief Minister's salary) over and above the Member's salary in the sum of £41,000 per annum.
 - (c) Ministers an additional salary (the Ministerial Salary) over and above the Member's salary in the sum equivalent to 68% of the Chief Minister's salary (ie currently £27,880).
 - (d) The Speaker an additional salary (the Speaker's Salary) over and above the Member's salary in the sum equivalent to 17% of the Chief Minister's salary (ie currently £6,970).
 - (e) The Leader of the Opposition an additional Salary (the Leader of the Opposition's salary) over and above the Member's salary in a sum equivalent to 25% of the Chief Minister's salary (ie currently £10,250).
- (6) Notes that the salaries of the Members of the House (excluding the Attorney-General and the Financial and Development Secretary, but including, where applicable, additional salaries, shall as of 1st January 1999 be as follows:-

(a) The Chief Minister	£56,000
(b) Ministers	£42,880
(c) The Speaker	£21,970
(d) The Leader of the Opposition	£25,250
(e) Other Members	£15,000

- (7) Resolves that all the above salaries shall be increased by the same percentage as any increase from time to time in the established salaries of the offices of Attorney-General and Financial and Development Secretary."

Mr Speaker, the motion, its effects and the justification for it in the Government's view, is self-explanatory and contained on the terms of the motion itself. The fact of the matter is that Ministerial salaries and salaries of other Members and office holders in this House, were last fixed, located under the terms of the Report by Mr David Pring in August of 1979. That Report makes it clear that the reduction reflects the fact that Ministers then were not engaged full-time and that the 50 per cent in the case of Ministers was deemed then to be a proper remuneration for the extent of time and responsibility commitment then engaged by the Ministers. To the extent, therefore, that Ministers now work full-time this is really not an increase in the rate of salary but rather the application of less than the rate then fixed but applying it to a full-time basis. Frankly, I have to say that the idea that Ministers who, as hon Members know, now have full responsibility for the conduct of Gibraltar's affairs should be remunerated at a rate which is in many cases significantly lower than, not just the most senior officials in his Department, but indeed, many lower officials in his Department and indeed many industrials in his ministry, is, in the judgement of the Government, inappropriate. We do not subscribe to this romantic notion that politics is a vocation and that one should do it for nothing. We have a view about that issue and it is a view which appears to be shared by most democracies in the western world and that is that conducting the affairs of government is a job like any other and that like any other job it should be remunerated in a manner appropriate to the responsibility and status of the job that it is. Hon Members will, at a glance, be able to see illustrated the essence of the points that I am making by referring to Appendix I in the Estimates of Revenue and Expenditure. They will see that in addition to the fact that, for example, the Chief Justice's salary is currently £64,000; that the Commissioner of Police's salary is currently nearly £61,000; that the Chief Secretary's salary is nearly £58,000; Deputy Governor, that part of his salary which is paid locally, £55,000; that the Attorney-General and the Financial and Development Secretary's and the Additional Judge's established salary is £55,000, £54,901; that the Deputy Commissioner of Police is on a scale from £43,600 to £46,258; that the Director of

Education and Training is on a point at over £44,000; that Head Teachers, depending on the size of their schools and the group therefore into which they fall earn from £25,400 to £43,443; that a Superintendent of Police earns on a scale between £38,123 and £41,393; that the Chief Fire Officer earns £40,578; and that indeed the senior officers in the civil service earn a scale between £25,392 and £39,324. Incidentally, these figures are subject to the 1998 Pay Review, which are not yet reflected in them. The Deputy Chief Fire Officer earns between £32,395 and £35,482; that a Deputy Head Teacher earns up to £34,969 and so on and so forth. Even a qualified teacher, after sufficient number of years service, goes to the scale up to £31,306; a Chief Inspector of Police from £28,024 up to £31,173. One really has to go down to the position of an Inspector of Police, through the office of Senior Youth Worker, it is really not until you get to an Inspector of Police... no, even an Inspector of Police earns more than Ministers, at £28,024 at the top of his current scale and it is only below that that the top of the scale is comparable to the salaries currently earned by Ministers. Of course, everything that I say about Ministers applies, but albeit to a mathematically lesser extent, to the office of Chief Minister.

Mr Speaker, the anomalies of the extent to which Ministerial salaries have fallen behind what the Government consider to be their proper level, in a sense can be further illustrated by some of the amounts that are being earned at both industrial and non-industrial level. Admittedly, in many cases subject to overtime, much lower down in the echelons of Government. Let us consider these figures against the backdrop of the fact that Ministers currently earn £27,450. Taking just one section in the Ministry of Tourism and Transport, the SPTO has earned, in 1997/98 sums in excess of £30,000; the PTO has earned sums in excess of £30,000; the Works Supervisor has earned sums in excess of £32,000. In the Electricity Generating Station, mechanical section employees have earned sums ranging between £26,000 and £27,500. PTOs in the Electricity Department have earned sums between £24,000 and £34,000. Employees in the Post Office have earned sums between £24,000 and £36,000, and the number of examples that one could give, obviously without identifying individuals, is legion. The fact of the matter is that it is the Government's view that if as Gibraltar must in its long-term interests, if Gibraltar is going to attract into the field of politics and through the field of politics into these ventures people of the right calibre to govern Gibraltar they have got to

be paid adequately, otherwise Gibraltar will be condemned to be governed either by people who have enough private capital to do it on a charitable vocational basis, in other words the stinking rich, or those people for whom a salary of £27,000 amounts to an improvement in their salary which of course was the case with most of the Opposition Members when they became Members of Government. It is the view of the Government that it is not in Gibraltar's interest for the categories of people who can afford to go into politics should be limited to that. The point is to give the electorate the choice of every category and not to use quite wrongly the system of remuneration to keep the competition out until eventually people offer themselves, regardless of the conditions to do something about it. The hon Members are entitled to their views, which of course are as respectable I am sure as our own but I have not heard it articulated anywhere in Western Europe that those that govern should somehow not be paid a full and proper salary because there is some romantic value under-paying them because somehow it demonstrates their commitment to the people and it demonstrates their sense of sacrifice and their sense of commitment to the affairs over which they are responsible. That is not a connection that is made anywhere else and Government policy is that it will cease to exist here as well.

Mr Speaker, I believe that the restructure of salaries and also the increase, but not just the increase, the restructure as well, creates a basis upon which a proper distinction can be made in the future between the salary that we all get as parliamentarians and the salaries that those of us that have duties outside get in respect of those additional duties. I commend the motion to the House.

Question proposed.

HON J J BOSSANO:

I am not surprised that they have all clapped, Mr Speaker. They have something to clap about. I think, without my having to say so, that Government Members realise that this motion does not have our support. Not because of any romantic notions that the Chief Ministers may wish to attribute to us because let me say that the structure of salaries that exist today, which was introduced in July 1980, was the product not of romantic notions of ignorant workers who for the first time were going to earn more money but of Sir Joshua Hassan, Peter Isola and myself, who between the three of us agreed what

the structure should be. So presumably all three of us in 1980 were equally romantic and it is a romance that the present Members of the Government do not share. We did not introduce the system in 1988 because we felt that it was getting more money for us. Certainly, there is at least one Government Member for whom this means getting much more money than he would ever have hoped to have got if he had stayed as Branch Officer and he seems to have been as enthusiastic about clapping as the rest so he does not have any problems with romantic notions. It is true that there are many people in the public service who get paid substantial salaries as has been mentioned but it is also true that none of the three persons who are retired from previous jobs and on pensions would be able to be either Chief Inspectors or Chief Fire Officers or mechanics in the Generating Station or anything else because they have already completed a career. There is a counter argument for any one of those arguments that have been put but, of course, there is an even more serious deficiency and an even greater objection to what is being done and since the Chief Minister is so fond of comparing himself with what everybody else is doing in the whole of Western Europe he must know that it is not normal in the whole of Western Europe for a Government arbitrarily to determine what they earn, what Mr Speaker earns and what we earn without any process of involvement of anybody else and that is what they have done. That is not acceptable, that is not the way Parliaments determine the salaries of Ministers or Opposition Members or anybody else and that is not what happened the last time. Let me say that the last time, even though the GSLP only held one seat in this House, the then AACR Government gave the GSLP an equal say in being involved in making representations and in putting its views forward as they have as the majority party with eight seats and the DPBG had with six seats. We actually were given the same opportunity to make representations and I think all the arguments that the Chief Minister has put in this House given how strongly they feel about this it is not something that they felt so strongly about that they felt there was a need to give priority to it in the manifesto when they fought the Election in 1976. Obviously, they only realised how badly paid they were when they started getting paid. They had not realised it before.

Let me also point out that to talk about the salary being brought down to 50 per cent may give people the impression outside that what happened in 1980 was that there was a salary reduction. That was not the case. What happened in 1980 was that because parity came in in 1978 it was felt proper to conduct an in-depth review to

see how the new structures that were being created in both the public and the private sector in Gibraltar altered the relativities which existed at the time. In doing that they looked at a number of things including whether the salaries should be tax-free or gross and liable to taxation. Let me say that when Sir Joshua presented the motion in the House introducing the recommendations of the Pring Report he actually drew attention to the fact, with a sense of pride, that in his case the move from an untaxed to a taxed salary meant that his net pay went down and he did not feel that that made him undignified because he was actually reducing his pay. He actually made a point, I suppose that made him even more romantic than the rest of us, that whereas everybody else in the House was going to get a pay increase he was actually going to get a pay cut because he was better off with a lower salary, untaxed, than with a higher sum taxed, given his marginal rate of taxation. The position that was adopted by Mr Pring following the views that were put to him, and let me say that the procedure that was followed was that the Government or the Speaker contacted the Clerk of the House of Commons and asked for somebody knowledgeable in this to be invited to come to Gibraltar to conduct a review and to take the views of the Parties in the House and of other people who might want to make representations. We all felt at the time that it was invidious for us to be raising our own pay without reference to anybody else and what was needed was that we should follow what has been the position in the United Kingdom. At that time it was the Top Salaries Review Body that looked at Ministers' and Parliamentarians' salaries. If the Chief Minister wants to compare himself with the rest of Western Europe he needs to go no further than the House of Commons to find that if the United Kingdom Ministers do not come along, they say "well, we think we ought to earn £40,000 more than anybody else and that is what we are going to give ourselves because that is what we think we deserve because otherwise we feel undignified if we earn less. They do not do that. They have the Senior Salaries Review Body which makes recommendations, those recommendations are then taken to the House, there is a debate on the recommendations and then the House decides, as it is free and as this Parliament is free to do to either accept, reject or amend the recommendations. But the basis of what the House is debating is not what the people in power at any given time think is the proper relativity between anybody but what somebody has with a degree of objectivity, by looking at comparatives decided. I am glad that the Chief Minister kept on saying that this is the view of the Government because

the motion says it is the view of the House and it is not the view of the House. The Government have decided to justify the level and I think that the level may well be justified but it needs to be said by somebody who is not going to be the beneficiary. That independent person will look and will decide whether in fact the level that is being put is fair and whether the level that is being put needs to be put to attract the right calibre which has not been needed until now because we are all presumably in agreement that we are all of the right calibre so far. So we have all managed to get here notwithstanding the deterrents and we have had to compete and fight each other and insult each other to persuade people that we were of the right calibre and keep others out. Certainly, by the logic of market economics there has never been a shortage of supply for this particular job. The laws of supply and demand do not seem to substantiate the arguments of the Chief Minister. Nor does the philosophy of the Government which apparently is that we have a private sector led economy. Not that we want to have a private sector that wants to have a pay freeze for shop assistants which is the single biggest group in the private sector and which finishes up giving the people one and a half per cent over two years. What kind of example are we giving the rest of Gibraltar in which are reasonable pay demands when already since the Election our pay has gone up by more than anybody else's in Gibraltar, except the regradings that the Government has done in the civil service? It is all very well to say "well, look we are going to give the Financial Secretary 26 per cent and now look how badly paid we are compared to the Financial Secretary". Well, take the 26 per cent away from the Financial Secretary and then the relativities are restored. We can all outvote him here. I imagine I can even persuade the Attorney-General who only got 17 per cent to vote for removing the 26 per cent. In fact, if we look at the distribution of average annual earnings of all employees in Gibraltar tabled in this House, not so long ago, what we find is that the pay of a Minister which compares so badly with all the people that the Chief Minister has pointed out in the public service is actually in the top 10 per cent. That is, that according to the Government Statistics established in the survey, 90 per cent of full-time employees in Gibraltar earn less than Ministers. Only 10 per cent earn more or the same and therefore presumably a big chunk of that 10 per cent must be in the public sector given the long list that we have been provided today. If we were to compare on the basis of those figures the new level of salary, I calculate, we will have to wait for the next Survey and we will have to wait for a session of

the House when I can ask questions because I will be asking questions on this but I calculate that we will probably be having a situation where 95 per cent of Gibraltar will earn less than a Minister and 98 per cent of Gibraltar will earn less than the Chief Minister. It may be that that is what is required for the job of a Minister or a Chief Minister to be dignified, fair and just, that 98 per cent should earn less but why 98? Why not 99.9? Or any other percentage. It is an arbitrary relationship. Nothing has been said in the House by the Government how they arrived at £15,000. Not that we are complaining about the £15,000 but I can tell the Chief Minister what Mr Pring said in 1979 when he decided what should be the basis salary of the Member of the House that was in Opposition. He said that taking into account what the Chief Minister has said about the calibre of people we want in Parliament and the view that in politics it is just like any other job and one has got to be paid to do the job as a professional and one has got to be of a certain capability. I think that is really what the civil service do. The civil service provides a career structure and when the people get to be Financial Secretary or Attorney-General he is not going to come straight out of university, stood for election and got elected. They get to the top of the salary structure through a very long apprenticeship in life like Members who had a previous career. Dr Linares did not get to be the Headmaster overnight and possibly if he had come in younger he would have got to be the Director of Education but should he then say "well, because I am not the Minister of Education, why should the Director get paid less than me?" Well, look, because if the Director were to retire tomorrow and stand for election which he is entitled to do he would have already got to the top of his career and this is the second opportunity in life and I think it is a good opportunity for people because I believe it is important that we should have in the House a cross-section of our community. Given the fact that pensioners are now 30 per cent of the community, it is quite appropriate proportionately that we should have 30 per cent of the House made up of pensioners and we should have manual workers. I think it is valuable in taking decisions in Government and indeed in looking at problems from the point of view of the role of parliament, it is right and proper that there should be somebody with a background as a craftsman, as Mr Netto, as well as having businessmen and having lawyers. I think that is what Parliament should be. It should be a reflection of our society and that is what we should aim for and therefore we should make sure that the salary structure that we have got is one that provides a balance so that

it is attractive to people from all walks of life and not just attractive to some and not to others. I certainly do not agree that there is absolutely any evidence at all since the 1969 Constitution has come in, that only the very ignorant who stood to gain financially by being elected to this House because their capacity did not enable them to earn more money outside the House, or the very rich who could afford to do this as a hobby are the ones who have been elected. There is nothing to substantiate that that is what has been happening. And if that had been happening then there would be a serious problem of imbalance in the representativity of this House and we would need to cure it.

I have to say, Mr Speaker, that in the context of our approach to this we feel that the Government would do better for the dignity and the status and the fairness of all the Members of the House, to go back and repeat the exercise that was done in 1979. That is our view and it may well be that as a result of that exercise we could finish up with a structure that may be no different from what they are proposing and which we then might be able to support on the basis that we have had an independent assessor looking at the situation, listening to the arguments and obviously all the arguments that have been put here can be put to that person and we would be putting the arguments against because we do not agree with the actual relativities and structures and levels that have been determined, in our view, arbitrarily because nothing has been said to explain the specific amounts. Why a Minister 68 per cent of the Chief Minister? Why the Chief Minister £41,000 over the basic parliamentary salary? Why the £15,000? Mr Pring said then, and I imagine that that is still applicable today and I think the £15,000 meets that criteria that a Member of the House, particularly a Member of the House that was not a professional or a businessman, should be able to be full-time and not have to take on a job but that the basic salary should be enough to enable him to have an average standard of living and not to live in luxury. I would say that £15,000 meets the criteria and indeed the £13,000 which was the amount before met the criteria but it is possible because notwithstanding the figures that have been produced the average wage in Gibraltar of a manual worker is around £14,000 and even a monthly paid worker, the average pay is about £18,000. The basic salary that was fixed in 1980 was to enable Members, and I can tell the House that I was in that position, I was elected to this House in 1972, Mr Speaker, and I had a family to support and I was earning £500 a year and it was very difficult to get anybody to employ me. I

remember that at the time the Health Centre, the GPMS was set up for the first time and they wanted a night telephonist and I thought "well look at night I can work as a telephonist and still do my constituency work during the day" and when I applied for the job the Attorney-General of the day ruled that there was a conflict of interests because of my political loyalties between being a night telephonist in the Health Centre and being a Member of the House, as if I was going to say to people when they 'phoned up for the ambulance "who did you vote for?" before I sent the ambulance. At the time 70 per cent of the jobs in Gibraltar were barred for Members of the House because there was a totally undemocratic system in place where nobody in the official employers, MOD, DOE, Gibraltar Government, was allowed to stand for the House of Assembly without resigning in 1972. Therefore one was left to compete with the 30 per cent in the private sector and particularly if one had political views that were seen to be not very friendly to the business community, ones chances of getting a job were very limited. Therefore, Mr Pring looked at all those arguments which were put by us, they were put by me as the only Member of the GSLP in this House and he said "it is true, a Member of the House in Opposition, should not be forced to have to work... But that does not mean he should have a standard of living better than anybody else" and therefore he fixed the sum of something like £4,000 or £5,000 then as the basic salary and that turned out to be a quarter of the Financial Secretary. Yes, Mr Speaker, if the Chief Minister cares to read the debate of the Hansard of the time he will find that that is included in the Report and it is included in the debate. Mr Pring said "it should not be assumed that membership of the House can always be combined with another job and hence with another income". Therefore, the idea that Members of the Government were part-timers was at the same time combined with the idea that it was possible for Members of the Opposition to be full-time and that the basic salaries should be enough. I am saying that because I do not think there is a conflict between that and the salary that has been put. I am not saying that £15,000 is too little to be full-time. What I am saying is that the report of Mr Pring went into all sorts of different combinations and arguments as a result of the representations that were made.

Mr Speaker, I am going to move an amendment to the motion which I will now circulate in which I propose that sections 3 and 4 of the motion should be amended to insert the words, at the beginning of each of those sections before the word "considers", "Notes that the

Government considers" because, of course, as the Chief Minister has said in his opening address these are the views of the Government and not the views of the House and therefore the amendment reflects that it is the Government that consider that Ministers who now work a full day on the conduct of public affairs should receive a salary that replaces that fact and it is the Government that consider that the salary of Members of the House and so forth, so I propose that that should be amended to more accurately reflect the position and that section 5 should be amended by deleting the proposed salary levels and instead introducing the words to read "resolves that the procedure adopted in 1979 by this House to conduct an in-depth review should be repeated and that the office of the Clerk of the House of Commons should be approached with a view to obtaining the services of a person qualified to conduct such a review in 1999". I therefore propose the deletion of sections 6 and 7 as consequential amendments. There is no reason why the results of that in-depth review once it has been conducted and being brought to the House and is adopted by a resolution of the House should not be back-dated to the 1st January which is the date that Members want to introduce them. I am not asking them to remain in their present undignified position beyond the 1st January, although they will have to continue to appear undignified a bit longer and then retrospectively become dignified. I commend the amendment. I believe it is good for the House and it is good for public life in Gibraltar that we should be able to deal with this as it has always been dealt with previously in the past which is by an approach which is not based on the Government imposing its view on the House by the exercise of its majority but by accepting that the system that has been adopted before and certainly as far as we are concerned, Mr speaker, we saw no need, not for any of the reasons that have been given, but simply because we thought the system that had been put in 1980 have stood the test of time and therefore there was no compelling reasons as far as we were concerned to review it. It is a long time since that review took place. It is 19 years and the structure of Gibraltar has changed. The relativities have altered in many jobs, certainly the jobs that the Chief Minister was talking about in places like the Generating Station and the mechanics he was referring to are now non-industrial workers, salaried staff, before they were manual workers and on different methods of payment. All those changes may need to be looked at in the context of a study and it would mean that we would have an opportunity to put our views and so would you, Mr Speaker, and everybody else that has got an interest in this matter and I think that

would produce a result which would be more acceptable to all of us and I would venture to say, more acceptable to the people who have to pay us outside who themselves are not going to be as fortunate as being in a position that they can determine what they should get paid and vote it for themselves. I commend the amendment to the House.

HON CHIEF MINISTER:

Mr Speaker, speaking only to the amendment. I have to say that I find the Leader of the Opposition's sudden conversion and liking to the views by people from the UK about the conduct of local affairs touching and it is regrettable, of course, that he was not persuaded to the virtue of such exercises during the eight years that he was in office. The last review that was done by somebody from the UK about matters of Gibraltar's affairs were by accountants nominated by the British Government to order him to unscramble the network of untransparent companies that he set up in order to keep public finances away from this House. [Interruption] It is a shame, but true nonetheless. He is absolutely right, it was a crying shame but true nonetheless. Mr Speaker, it is a pity that when he compares his new found commitment to doing things in the same way as they are done in the House of Commons did not extend to his commitment sacrosanct in the House of Commons, of course, that 100 per cent of public finances should be deployed to the House at Estimates time. He did not need an expert from the United Kingdom to teach him how to restructure public finances so that 45 per cent of public revenue and expenditure disappeared from the Estimates and from the debate and from the Appropriation mechanism of the House. He will forgive me if I take with a more than just a pinch of salt his sudden conversion on the road to Damascus to the notion of having people come from the United Kingdom to tell us how we should do things. Of course, thanks in some measure to him, much water has flowed under the bridge in Gibraltar since 1979 and I think that since 1979 the constitutional emancipation of Gibraltar has progressed beyond the point where we need to send for the Clerk of the House of Commons to come and tell the elected representatives of the people of Gibraltar what is a proper salary for them to be paid. If the Leader of the Opposition believes that that is the way that it has always been dealt with in the past, always of course means once... I do not want to get technical, yes, before the Pring Report parliamentary salaries were set in an even less attractive way. Mr Speaker, always in the past suggests that there is some

established course of action in relation to ministerial salaries and I do not believe that there is.

Mr Speaker, the Government is not imposing its own view by majority except to the extent that that is what happens everywhere in the world. Every motion that has been passed in this House by Government majority, including the ones that he moved and passed by the Government majority are motions of the House. The hon Members appears to have some difficulty coming to terms with the fact that he is a Member of the House but a Member of its minority and it is normal in parliamentary democracies for the House to speak through the voice of its majority and that the voice of the majority then becomes the voice of the Parliament and this distinction that he wants to draw between the House and the Government is one which he can draw at a Party level. He is free to say outside this House "look, we voted against the motion and the GSLP Opposition does not agree with it" but that does not make it not the motion of this House or are we only now going to be able to adopt in this House motions with which the hon Member agrees. His first amendment is not acceptable for that reason. Mr Speaker, the idea that we should adopt the same procedure as was adopted in 1979 is not acceptable to the Government. I believe that if we are going to be a grown up, mature, parliament we have got to have the confidence in ourselves to do things even if they may be unpopular but to do them for ourselves. If I believe, as I do, that Ministers should earn more than £27,000, I propose it and then I take the political responsibility for it. I do not go rushing off to London to bring a Clerk of the House of Commons to cajole him into recommending the highest possible increase so that when it then materialises I have got to say "oh no it is alright, Bwana said that I could have it and as Bwana said that I could have it, it is now politically acceptable". Mr Speaker, that might be the hon Member's new found philosophy to the conduct of public affairs in Gibraltar. I have to tell him that it never has been, is not and will not be the philosophy of this Government. We as a Government take full responsibility for the actions that we propose and for the measures that we implement, including when we are the principal beneficiaries of it. If there is anybody in Gibraltar who feels that Ministers should earn £27,000 as opposed to £41,000 they will have ways of bringing their views and of making the Government pay whatever political price they feel a Government ought to be made to pay for having done this. Therefore Opposition Members will not be surprised to learn that the Government will not support the amendment.

HON J J BOSSANO:

I regret, Mr Speaker, the tone and the content of the reply of the Chief Minister which is, of course, typical of him and what we have come to expect of him in this House when he is incapable of defending any course of action intellectually he lashes out with the viciousness which he is so well equipped to try and create a diversion on an issue. We are not here talking about going on the road to Damascus or the road anywhere else, of conversions, of Bwanas or anything else. I do not know when the last time he went to see Bwana she told him but whatever she told him he said precious little about it when he got back except that it had been very courteous, very interesting. That is, after my experience, when things are described as very courteous, and very interesting, and very this and very that and they are totally devoid of content, it does not mean that Bwana has been very nice. But that is irrelevant, we are not talking about that. Presumably, I have to tell my friend Tony Blair that he should stop having the Senior Salaries Review Body looking at the salary of the Prime Minister because that means that Bwana has now got another Bwana, according to him. We are not suggesting that somebody should come from the United Kingdom to tell us what we have to do or what we do not have to do, what we are suggesting is that we should have somebody to look objectively and independently simply because it is natural that if somebody is going to be the principal beneficiary of something he is bound to be more subjective about the correctness of it than if he is looking at what somebody else should be earning. I am sure that the Chief Minister may have a very high opinion of his own code of conduct and a very low opinion of everybody else's. He normally talks as if that is what he thinks of himself and of everybody else. He thinks he is better than all the rest of us put together but most normal people would think that if one is deciding how much one is worth one is likely to have a higher opinion of oneself than somebody else might have and that having somebody looking at it independently and impartially has nothing to do with Bwana or conversions or experts or anything else. It is just that that is a fairly normal device because as Sir Joshua Hassan said in 1980 it is invidious for people to have to take decisions increasing their own salaries and that is why in 1976 we voted in this House the recommendations of the Morgan Report which was a previous one to the Pring Report, which obviously the Chief Minister did not think had existed, which actually linked the pay of a Minister to a Senior

Executive Officer and what Pring did was to carry out an in-depth study and as Sir Joshua said the matter now before the House was not being raised hastily or recently. This is being raised hastily or recently, so hastily Mr Speaker, that we received notice of the motion at the same time as the Press Release was being delivered in GBC, that is how hastily it has been decided. It said "indeed it was the 1975/76 Constitution Committee which agreed that once the Morgan Report was implemented", which is the one that linked the pay to a Senior Executive Officer, "a further and this time an in-depth study was required". The matter was left temporarily in abeyance until the negotiations on parity were concluded in 1978. There was a reason for doing it then and that was the fact that the introduction of parity had meant an alteration in the relativities and that therefore the Members of the House ought to have the benefit of having the impact of parity reflected in the way they got paid. That is how it has been since and I am saying that although we would not have initiated this, so it is not a question that we have been converted, we are responding to a Government initiative. Obviously, we did not suggest bringing somebody out from the House of Commons because we did not propose to raise them. What we are saying is that our response to the Government is not simply to say "no", although obviously we did not think there was a need to do this otherwise we would have done it but given that the Government feel there is a need, have put the argument in the House and of course the views in the motion are the views in the Government, although they may become the views of the House once the motion is voted. When the House gets the motion it is the view of the Government that is in that motion, not the view of the House. To try and meet the Government part of the way we are suggesting that they have nothing to lose if the strength of their convictions are such that they feel that a very formidable case can be made for these relativities, why not put them to somebody that is experienced in these things. Why not ask the British Government for somebody from the Senior Salaries Review Body if they do not want to go to the House of Commons? But what we are saying is that the argument ought to be put to an independent person and that we ought to have an opportunity of putting other arguments. If we are doing an in-depth review and there are things about this House that we should be looking at I have not raised the question, for example, of the allowance for secretarial assistance which was fixed at £500 in 1979. I am not saying that it should or it should not but presumably if we had an outsider looking at it, just like Mr Pring proposed £500 in 1979 and it has been like that ever

since, somebody else might propose that what we need to do is to have some money devoted to providing facilities to enable Members of the House who are not in Government to provide a service to constituents. We do not think it is a matter that we should decide ourselves because it is better that somebody should look at the whole issue of how the House is remunerated, how Ministers are remunerated, and how the facilities are provided if there is in the Government's view a need for a review, let us review the whole thing. Should we not look, Mr Speaker, at the beginning of the session we made reference to the sad loss of our Colleague should we not look at whether in fact there ought to be some kind of life insurance cover provided for Members of the House who may unexpectedly find that they are bread winner in the family. What I am saying is that the idea of a review would then enable more things that simply what the Ministers get paid and how much more they should get paid than the Opposition or than you, or me or anybody else to be looked at. All these things can be looked at, given that the Government want the matter reviewed and that they feel strongly that there is a requirement for it and that it is necessary and that it is in the public interest. Because we do not agree with the way that they do it, surely their response is not the kind of things that the Chief Minister has said about us being told by accountants what to do and untangling and commitment to parliamentary democracy. That is a reflection of the fact that he is unable to explain why he does not want to do it this way. He has not made one single defence to explain how he arrived at any of the figures. If the Member had said "well, what we have decided to do is like you said when you brought the Bill for the Ombudsman" he said "we have looked at New Zealand and we have looked at the UK 1967 Act and what we have decided to do is we have taken what we think is the best from this one and the best from that one and that is how we have come to these conclusions". Our view was to say "we will give them the benefit of the doubt and we will wait and see how it is in practice". But the Member has not said "we have decided it should be 68 per cent because we feel that the present Ministers work 68 per cent as hard as the Chief Minister and that is why it should be 68 per cent". What is the rationale for this 68 per cent? It is totally arbitrary, presumably because nobody has said where the figures come from. There is no reference anywhere in the motion or in the contribution to say "look, we have done a study ourselves, we have looked..." other than the mention of what people get paid in the civil service. The only argument that has been put is an argument that regrettably does not hold water unless one can

demonstrate that the comparability with all those grades did not exist in 1980. I do not think that that is true except perhaps in a few cases. In most of these cases most of the grades were there then if we look at the salaries then. I regret very much that the approach which we decided when we discussed it on our side of the House of rather than trying to make party political capital as we could have chosen to do and vote against this and accuse them of giving themselves big pay increases we came up with what we thought was a constructive alternative which need not cost them any money and I suppose the only reason that they are not prepared to accept it is because they did not think of it themselves. I regret that the amendment is going to be defeated, Mr Speaker.

Question put. Agreed to.

HON J J BOSSANO:

I do not really think that there is really any more that I can add if I have not been able to persuade the Government.

HON CHIEF MINISTER:

Mr Speaker, the Motion to increase ministerial salaries may not have the hon Members' support although it is not clear whether what does not have his support is the increase or the way it has been done.

HON J J BOSSANO:

Neither.

HON CHIEF MINISTER:

Neither, right neither. Well, to the extent that it is about the way that it has been done he has one view and the Government have another and we simply have to agree to disagree. To the extent that we do not have his support to the concept of paying Ministers more than they currently earn I have to say that I know that it is his view, it has been his view for several years, but it was not the view of his Ministers who used to go around openly advocating for higher ministerial salaries, openly speaking about how they were trying to persuade the then Chief Minister to raise ministerial salaries to a reasonable level and how the Chief Minister doggedly refused. Mr Speaker, I realise that he has as much power over his Colleagues in Opposition as he had over his

Colleagues when in Government. He is not describing the views of his Colleagues, he is describing his own because his Colleagues, excepting those who are there now who were not in the previous House, his Colleagues openly spoke of the view. Fine, I am not saying that I heard it from all eight of them, but certainly from more than two or three of them. These were discussions that used to take place frequently between themselves. At the end of the day it is a matter of opinion. I am leaving to one side his objections to the way it has been done and I am only speaking at this moment to the concept of raising ministerial salaries. Therefore, Mr Speaker, that is what I mean by a romantic notion. The hon Member has, and has had for some time, the notion that when he was in the Opposition he had to get a night job as a telephonist in the Health Authority in order to make ends meet...

HON J J BOSSANO:

I did not get it.

HON CHIEF MINISTER:

Fine, because it was necessary for him to try to get it, well that is his notion. It is part of his background, it is part of his political ideas, it is part of his views, fine. I do not say that they are not worthy, I am sure it will strike a very good chord amongst many people in Gibraltar who take that view. The Government do not. The Government do not take the view that the salaries of Ministers should be fixed by reference to the notion that this is somehow something that one does out of love and commitment, although certainly I can tell the House, that whatever the salary is, one still needs love and commitment to do the job and that simply paying a salary of £41,000 to Ministers or £56,000 is not a substitute, he well knows that. Mr Speaker, having said all that I have to say to the hon Member that I think that except for his views about whether we should have gone down the Pring Report type route or whether we should not have, except for that fact, I accept that he obviously thinks that my own view is wrong and his is right and I believe the contrary, but there is an issue there. Except for that, the rest of his address really has been based on a false premise. The hon Member speaks about establishing salaries at a new level. Mr Speaker, the Government are not establishing Ministerial salaries at a new level. The Government are not increasing, although obviously the effect is more money in the pay packet, but the Government are not increasing the rate at which the labour of a Minister should be valued. Indeed the

Government have not even gone as far as the 1979 Pring Report to justify it. The 1979 Pring Report said that because Ministers are part-time they should be paid 50 per cent of the then category of people that included the Financial Secretary and the Attorney-General, fine, Mr Pring thought that that was OK in 1979 because indeed in 1979 Ministers, including the Chief Minister, would go about their business during the working day and then at three o'clock in the afternoon, except in times of crisis, would amble into the office and see what papers there were to sign. Mr Speaker, that is what ministerial life was in 1979 and if Mr Pring thought that in 1979 that was worth 50 per cent of the salary of somebody who was there all day, all the Government are saying is "we are there all day" and if we are now there all day unlike Sir Joshua Hassan and Mr Isola when they were in Government, why should we not be paid the same as Mr Pring thought other people who were there all day should be paid. This is not a question of saying "Ministers were paid at £5 an hour and I think that they are worth £25 an hour and therefore I increase the rate of salary". This is simply saying the salary of a Minister was set by Pring in 1982, having set the salary he in effect cuts it in half to reflect the fact that they only played the first half of the match and I am now saying that Ministers now play the second half of the game as well and as we play both parts of the game we should get both parts of the salary. This is not an increase in the salary rate, this is not the Government deciding how much we are worth. Mr Pring decided how much we were worth by reference to the Attorney-General and the Financial Secretary and he thought that for a half a day's work we were worth half their salary and I say "fine, I will settle for that, if we were worth half their rate for half their time, if we work the full time we must be worth the same", which, incidentally, is not what we have done. We have not been quite so bold as to take a 100 per cent for Ministers of that salary, but frankly, Pring, of which the Leader of the Opposition appears to be a supporter, the concept of Pring would have justified, the philosophy of Pring would have justified raising the level of Ministerial salaries to the level of Attorney-General and Financial and Development Secretary and it is still not that, they are still 30 odd per cent adrift. Therefore, I think it is important to be aware of that distinction, that the Government's motion does not depart from the principles established by Pring as far back as 1979.

Mr Speaker, it is the Government's view by which I am happy to stand and a view which I am happy to defend that

at £27,000 a Minister of the Government is underpaid. Not just by reference to the responsibilities that he discharges not just by the hours that he puts in, not just by reference to the status of the office but by reference to comparables. I have not yet met anybody who thinks that a Minister should earn less than a police inspector, why should a Minister earn less than a police inspector? Why? Because the hon Member thinks there ought to be an element of vocation in this? Whoever set the salary of the Prime Minister of the United Kingdom, at somewhere in excess of a £100,000 did not think that he should take the view that his job was a vocational love affair. Everywhere around Europe people are paid an executive salary for what is an executive job. I am quite happy to acknowledge that the hon Member takes a different view of it. Fine. We disagree on that as on so many other things. The hon Member says that these increases are arbitrary and that we have done them without consulting anybody else. Mr Speaker, arbitrary would have been for us to sit in our offices and just award ourselves a pay rise. I do not know if he takes the view that bringing the motion to this House which we are now debating is not consultation, whether this does not give him the opportunity to fully express his views and to vote against them. I cannot cure the fact that he is in a minority and because he is in a minority as I was when I was sitting in his chair, as in all other parliaments the minority succumbs to the view of the majority. It does not render the process illegitimate. The fact of Opposition in minority not making their opinion prevail over the majority, does not make it non-consultation, does not make it arbitrary, and does not make it the Government doing what they please. I am not responsible for the fact, as indeed he was not when he was in office, that our constitutional system, is such that everybody on the Government side of the House is in the Government and there is no back bench on this side perhaps to inflict the occasional defeat on the Government. That is one of the, in my opinion, unsatisfactory characteristics of our electoral and our parliamentary system which we nevertheless have to live with and the fact that it exists should, I would urge the hon Members not lead us to treat ourselves in this Parliament less seriously than other parliaments treat themselves simply because we have that structural characteristic.

The hon Member spoke of his view that salaries should be one that provides a balance. In our judgement, that is exactly what these proposals are. It is a balance between what we regard as a fair and reasonable

remuneration for the job that is done. It is a balance between that and other factors which have not been recognised a 100 per cent in the Government's proposals. If he wants to know how we came at the figures, there is no magic, scientific formula. These things are a view of how much is reasonable for the Chief Minister to be paid and how much is reasonable for a Minister to be paid in comparison to what the Chief Minister is paid and one works down like that. It all started with the view that the Chief Minister should receive a salary of £56,000 and all the percentages, I agree that 68 is a very clumsy figure, it used to be 75. The reason why it is 68 is because having fixed the quantum amount for the Chief Minister, having then decided relative to that what the quantum amount of a Minister's salary should be, that was the nearest percentage figure to what it worked out. We did not make the decision in percentages, we made the decision in number of pounds and then those figures were given the corresponding percentages to each other. I accept it is arbitrary, I accept that the choice of figure is a judgement about what the Government believe is the correct salary structure. Government might have taken the view that it should have been 50, or 65, it is a view, it is a proposal, it is the Government's judgement of what each of us should be paid for the respective jobs that we each do. For the record I just want to say that the hon Member should really resist the temptation to alter my words. I say this lest the headline writers should inadvertently attribute to me his misrepresentation of the words that I actually used. I did not say that with the present system we were condemned to the rich or the ignorant, the very ignorant, as he attributes to me. I said that we were condemned to the very rich or to that category of people for whom the old ministerial salary was an improvement in their salary. I never used the word "ignorant". I never introduced any offensive criteria, he did. One does not have to be ignorant to earn less than £27,000 a year, one does not have to be ignorant so I do not know what connection he makes between intellectual capacity and salary but I know many people who are very far from ignorant who earn less than £27,000. I just say that lest he was hoping that the report of this debate may somehow... because people of course will believe what he says I say... unless that should happen, let us make it perfectly clear that the only person that has insinuated that people who earn less than £20,000 are ignorant, very ignorant, is him and not me.

Question put on the motion. On a division being called the following hon Members voted in favour:

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

The following hon Members voted against:

The Hon J L Baldachino
The Hon J J Bossano
The Hon J J Gabay
The Hon A J Isola
The Hon Miss M I Montegriffo
The Hon J C Perez

The motion was carried.

HON CHIEF MINISTER:

I beg to move the motion standing in my name jointly with the Leader of the Opposition and which reads as follows:

"This House -

1. Notes that Fr (as he then was) Bernard Devlin arrived in Gibraltar on the 29th June 1946 from his native country of Ireland to serve as a Roman catholic priest in Gibraltar and that he was made a Monsignor by His Holiness the Pope on the 14th November 1984.
2. Recognises Fr Bernard Devlin's tireless work and dedication as a priest in Gibraltar since June 1946 (a total of 52 years), not least the establishment of the Church and Parish of St Theresa's.
3. Notes that Monsignor Devlin was appointed Bishop of Gibraltar on the 6th January 1985 and served devotedly in that position until earlier this year, and that he is now Gibraltar's first ever Bishop Emeritus.

4. Notes Bishop Devlin's contribution to inter religious tolerance and harmony in Gibraltar.
5. Notes and shares the love and affection in which Bishop Devlin is widely held by the people of Gibraltar.
6. AND in recognition thereof resolves to bestow on him the highest honour that this House can bestow on a citizen of Gibraltar, namely the Honorary Freedom of the City of Gibraltar",

Mr Speaker, as the motion says, Bishop Devlin is a native of and was born in County Cork, Ireland, in March 1921 and like so many Gibraltarians here in Gibraltar he was educated in Ireland by the Loreto Convent and the Christian Brothers. That might explain why he developed the affinity that he has done with us here. He was ordained a Roman Catholic priest in December 1945. He arrived in Gibraltar as a young priest in June 1946 and he has therefore devoted his entire priestly life to the service of the people of Gibraltar. His first appointment, when he arrived, was as Chaplain of St Bernard's Social Club, a club which he still maintains close links of friendship. He was later appointed curate of St Theresa's which was then a small nissen hut where the Government Hostel in Devil's Tower Road is now situated. Through his hard work and effort he acquired the current site and a new larger hut which we all came to know to be erected on the new site. He was appointed Parish priest of St Theresa's in 1974. In that position he was pastor to a whole new community that grew in the northern end of Gibraltar with the building of Glacis, Laguna and other parts of the north district. In 1975 he was appointed Vicar General of the Diocese and in 1984 he was made Monsignor by His Holiness the Pope. On the 6th January 1985, following the death of our then Bishop Monsignor Rapallo, he was ordained Bishop of Gibraltar by Pope John Paul II in Rome. He has never claimed miraculous powers for the fact that on the very day that he was ordained in Rome it snowed in St Peter's Square for the first time in 45 years. A few days later he was installed in his Cathedral here in Gibraltar.

Mr Speaker, such is the formal curriculum vitae of Bernard Devlin but needless to say it does not tell his story here. He is the only non-Gibraltarian to have established such strong bonds with the people of Gibraltar. Bernard Devlin's priesthood and episcopate is characterised by a simplicity of faith and manner, a humility and warmth to all with whom he dealt that

endeared him to all people in Gibraltar, Roman Catholics and other Christians and non-Christians alike. He is certainly a man of firm and forthright views and opinions and certainly not reluctant or shy to tell them you straight, even when they are about you or about an opinion that you hold. This plain speaking and direct nature is another of his characteristics which endeared him to the people of Gibraltar. His episcopate was a great success in other respects as well. He ordained more priests than any other Bishop of Gibraltar had ever done before. His episcopate provided the most fertile period of Gibraltarian vocations to the Roman Catholic priesthood ever. He presided over the restoration of the Cathedral and he presided over the rededication of the Shrine of Our Lady of Europe in a ceremony which both in civic and religious terms was a spectacular success and achievement, not just for the Roman Catholic Church in Gibraltar but, indeed, for Gibraltar as a whole. He has always had a special concern for the poor and underprivileged and needy in our community. Everyone was important enough to him to merit his attention and his thoughts and his personal touch. He was responsible for the establishment of the first soup kitchen in the Community Centre which was subsequently developed into a much more comprehensive service in Nazareth House. He was a tolerant Bishop, critical, forthrightly of things in the Catholic Church locally and outside Gibraltar with which he did not agree but tolerant in the sense, that notwithstanding his views, he made place in the Church over which he presided in Gibraltar even for those movements and views with which he was personally not in agreement or comfortable. Having expressed his views he is not the sort of man that imposes them on others from the lofty position from which he could have imposed them, his Episcopal Chair. I think that, too, has contributed to the affection in which the people of Gibraltar come to hold Bernard Devlin.

My Speaker, the Freedom of the City is the most Gibraltarian of all awards that someone in Gibraltar can receive. He may be Irish and proud of it but he has also become a Gibraltarian and I believe that he is proud of that as well. He has spent over 50 years of his life in Gibraltar. He has made Gibraltar his home. He has dedicated all his working life and effort to us. He has served us in the highest spiritual and pastoral office of this community. He has done so with complete commitment, humility and love, with a total lack of selfishness. He has touched almost everyone in Gibraltar personally. He has a special relationship with the people of Gibraltar. Today, as the Elected

Representatives of the people of Gibraltar we recognise all those facts. We recognise his life's work for Gibraltar, his support for our aspirations as a people, his defence of our rights and of our interests as a people both spiritual and in other walks of life. We give him the Freedom of what we all hold most dear, our City. I commend the Motion to the House jointly with the Leader of the Opposition.

Question proposed.

HON J J BOSSANO:

Mr Speaker, I want particularly to welcome the fact that we have been given the opportunity of moving the motion jointly. I think it is the first time that the Granting of the Freedom of the City has been done on a joint basis, although of course it has always been carried unanimously.

I believe that the outstanding quality that Father Devlin, as he always enjoyed being called even when he was a Bishop, had and has was his humility, if one wants to describe it that way or I would put it in another way, his lack of concern about position of status. He really was the classic image of the parish priest close to his parishioners and he never stopped being that and his parishioners included people who never went to his Church, it included the whole of Gibraltar. He was able to develop an approach to dealing with not just people of different religions but people who were agnostic. The same kind of relationship that one expects to find in a pastoral relationship in the Catholic Church and he was an example of the best that one can look for in that direction and that was recognised by everybody and everybody loves him because of his simplicity and his approach and his down-to-earth manner which has been his hallmark throughout his life. I think we have been enormously fortunate to have had him in Gibraltar for most of his life and that indeed any country would have been proud to have had Father Devlin as one of its sons, as one of its people. Certainly he continues to be dearly loved by our people and he is one of us and I am sure that the whole of Gibraltar will be warmly identifying itself with the decision that we are taking today in this House.

HON J J GABAY:

Mr Speaker, I was always under the impression that Santa Claus, round about this time of the year, came with presents for children. To me it has been quite a revelation that he also comes with magnificent presents for adults. Let me say, having heard the discussion on the motion which of course dealing with price tags and so on is an extremely materialistic one, I find it is refreshing to move into this motion which has more spiritual connotations and, indeed, deals with what we somehow demeaned in the previous motion the degree of non-monetary sacrifice for the benefit of the community.

The honour that this House is about to confer on Bishop Emeritus Devlin reflects both the personal and the transcendental. Not only does it recognise the fine qualities and calibre of the man, it also reflects through and beyond his episcopal role an exemplary concern and love for the general community of Gibraltarians. The ideals of justice and love are best measured in the way that they are applied to minorities and indeed to the more vulnerable members of the community and indeed the alien, as part of the concept of the brotherhood of man, a concept of true justice that is global and embraces humanity at large. As St Augustine proclaimed, "take away justice and what are kingdoms but mighty bands of robbers". We can document this in history and indeed in many societies the world over. Father Devlin, as he is still referred to endearingly by so many of us, irrespective of our denomination, has made a singular contribution to the inter-denominational harmony that characterises our society and which should be one of our most treasured assets. To become a father figure within one's domain, within one's religion is difficult enough, to become a father figure as well as a personal friend to those of other denominations verges on greatness. His approach and his vision have left no room for the evils and bigotry, racism and sectarianism. A man of outstanding intellect and yet humble and kindly in his ways. When I sometimes see him sitting all on his own on one of the benches that line Main Street, with a kindly word or a smile to any passer-by, I recall the apt words of St Theresa of Avila "Tambien entre los pucheros anda el Senor".

Mr Speaker, I feel deeply honoured to be a Member of this House as it bestows on Father Devlin its greatest honour - the Freedom of the City. Thank you.

HON DR B A LINARES:

Mr Speaker, I am in the position where I can speak of Father Devlin not only as all of us as a parishioner of his to re-use the word expressed by the Leader of the Opposition, he married me, he baptised my children, he has been a loveable parish priest to me, but I am also in a position that I can speak of him as a colleague, as an ex-colleague, as a fellow priest. In that respect I welcome this opportunity of voting for this motion because in a way it expresses at that level the warmth and the companionship and the friendship and the support and the counsel which I always received from him and I have the happy opportunity now of acknowledging this on a personal score by voting for this motion.

HON J L BALDACHINO:

I also have a personal gratitude, about 25 years ago he also married me and it was difficult at that time when one was marrying somebody from a different religion. When we went to see him, he had because of the system of the Catholic Church, there was a problem before he could marry me but the way he resolved that for the benefit of myself and my wife was something special of the man that we are now talking about, Mr Speaker, who is Father Devlin. I would like to identify myself with everything that has been said here on the man as he is and how human he is, rather than somebody who wanted status. He was always there and I suppose he will still be there for anybody who has a problem, whether it is a Roman Catholic or from another denomination. It is a great honour for me to be able to vote to give the Freedom of the City to Father Devlin.

HON CHIEF MINISTER:

I suggest, with the co-mover, that we should leave it at that and I see no need to add anything to what everyone else has said.

Question put. The motion was carried unanimously.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

I have the honour to move that the House should resolve itself into Committee to consider the Insurance (Motor Vehicles) (Third Party Risks) Ordinance (Amendment) Bill 1998, clause by clause.

**THE INSURANCE (MOTOR VEHICLES) (THIRD PARTY RISKS)
ORDINANCE (AMENDMENT) BILL 1998**

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

Clause 2

HON CHIEF MINISTER:

Mr Chairman, the Leader of the Opposition will I am sure remember that when we took the Second Reading of this Bill, an issue arose about the reference to this phrase "relevant foreign state" and although I gave him an explanation at the time off the top of my head, I told him I would seek confirmation of it and give it to him during the Committee Stage which I now do. I am happy to say that my explanation at the time was accurate. The Insurance (Motor Vehicles) (Third Party Ordinance), as it stands today, before it is amended by this Bill, dates back to 1986. Earlier versions, for example, that originally appearing in 1984 Laws of Gibraltar, made no reference to the phrase "relevant foreign state". Such reference was included for the first time in the 1986 Ordinance to give effect to a series of bilateral agreements extended by the UK to Gibraltar between the UK and certain non-Community states regarding motor insurance. The effect of those references was to place relevant foreign states on a par with Community states. Thus, in Section 10, vehicles from Community member states or a relevant foreign state are given a special derogation from the requirements to carry a Certificate of Insurance and in Section 12(1)(a)(i) vehicles from relevant foreign states are given the same rights as vehicles from Community states in that their drivers do not need to produce evidence of third party insurance when entering Gibraltar. Therefore, the point is clear, relevant foreign state is added to member states to the extent that other states have, by agreement, extended to them the same right as member states.

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

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

THIRD READING

HON ATTORNEY-GENERAL:

I have the honour to report that the Insurance (Motor Vehicles) (Third Party Risks) Ordinance (Amendment) Bill

1998, has been considered in Committee and agreed to without amendments and I now move that it be read a third time and passed.

Question put. Agreed to.

The Bill was read a third time and passed.

PRIVATE MEMBERS' MOTIONS

HON J J BOSANO:

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

"This House calls on Her Majesty's Government to formally reject the Matutes proposals of the 10th December 1997 without further delay".

Mr Speaker, there really should have been no need for this motion in the House, given that Her Majesty's Government was formally requested to do so in January of this year and that in fact at no stage have they given any public explanation in answer to questions in the House or in other ministerial statements as to why they claim to be continuing to study something which they know is unacceptable and was unacceptable indeed from the first day. The actual proposals which, of course, is only a small part of a statement which included a lot of other things which are equally objectionable, have already been put informally and verbally to the previous Conservative administration and rejected on the spot by Mr Malcolm Rifkind when he was the Foreign Secretary. I think it is even worse for the Labour Government to be saying that what they are doing is studying something because they are obliged to look at the proposals that are put by Spain under the terms of the Brussels Agreement, which is what they have said, when those proposals have previously been floated informally and rejected on the spot because the whole purpose of floating something informally is in fact so that one does not go through the procedure of tabling something. This is a fairly normal thing in any negotiating process, people are sounded out and if something has got no mileage whatsoever, no prospects whatsoever, rather than finish up with a conflictive situation, the proposals are not formally tabled. The only explanation that one can think of was therefore that the Spanish Government decided to proceed with something which they had already had signalled to them was not going to get anywhere because they must have thought there was greater

receptivity as a result of the change of Government. Of course, it is very bad from our ideological position, quite reprehensible, that a Labour Government should permit such a misconception to continue for so long. Frankly, I would have hoped that in the meeting the Chief Minister recently had with Joyce Quinn when he raised the matter he would have been able to get a categorical assurance that the rejection will take place and I hope when he speaks to the motion in the House he will be able to inform us, and through us the people of Gibraltar, whether in fact such a categorical assurance has been given or any explanation has been given to him as to why it is they still think they have something to study after all this time. Certainly, in the answers he has given to questions in this House on this particular subject, he has himself expressed an inability to comprehend what it is that the studying consists of when really there is nothing there which would suggest that there is an alternative which one can respond. The whole purpose of starting proposals in a negotiating process is because there is enough common ground so that one can then come back and say "Well, look, I do not agree 100 per cent with what you have proposed but I have got an alternative counter proposal to make". For a proposal to be under consideration and being studied for nearly a year and then to be rejected flat, is in our judgement, not conducive to improving relations with Spain but in fact we are doing the very opposite, that is to say, bringing a deterioration because in fact what one is doing, is whether one wants to or not by that approach is raising unjustified expectations. Consequently, the fact that those expectations will not be met create more resentment than if the expectations had not been raised in the first place.

We all know that the basis of the proposals of Sr. Matutes are really no different from that of Fernando Moran made in 1985 to coincide with the opening of the frontier. The Moran proposals were never brought to this House or debated in this House or raised in this House because initially they were put forward under confidential cover and they were provided to the Government of Gibraltar, to the Chief Minister of Gibraltar in October 1985 on a confidential basis. There was no knowledge in Gibraltar as to what had happened to those proposals or what they contained until Sr. Moran, without bothering to tell his British counterpart decided to include them in full in his autobiography. The British were still saying they were confidential when everybody could go and buy in any bookshop and read the whole thing. It was then that we became aware of their

existence. Certainly, the British Government had at no stage asked us what we thought of those otherwise they would have been rejected flat but we did not even know they were there. The position of the British Government then was that they were sort of shelved, they were not under active consideration and that it was better not to raise it on the basis of letting sleeping dogs lie. It was shelved and forgotten and as long as they are forgotten they are okay. If we raise it then what we are going to be doing is rocking the boat and that is going to be worse for us and they were against that. The advice of the experts in the Foreign Office was that it was not in our interests to revive the matter. We disagreed with that view and on our insistence we were given a political commitment that they would be rejected at the earliest opportunity and when the earliest opportunity came, which was the next round of talks, we asked for confirmation that they had been rejected and we were told "yes, they have been rejected" and when we asked for the record of the meeting at which they had been rejected we were told that they were rejected in the corridors. So then we said "Okay, as far as you are concerned they were rejected in the corridors but we want it rejected "on the record" and then they went back again and they rejected it on the record. I am putting this in the context of this motion because the reluctance of the United Kingdom in the past even though, to be fair to the Conservative Government of the day, they never actually said they were studying them or considering them or doing anything with them other than shelving them and that they thought that as long as they were shelved nothing else would happen and that was the best way to deal with it. We believe that Spain, in terms of its propaganda about the reasonableness of its position has been handed gratuitously a weapon in being able to say to third parties "Well, look, we have made proposals on such a date and they are being studied and we are waiting for the study to be over" but obviously the longer somebody is studying something the more optimistic one tends to become that it is going to lead somewhere. Therefore, we believe that Her Majesty's Government first of all is failing, frankly, to carry out its constitutional obligations to the people of Gibraltar and in particular to the Government of Gibraltar. I think it has no option if it is told "We want this rejected" then the British Government has got no choice but to do what it is required to do because we believe that the nature of the constitutional relationship, particularly in an area which is linked to the Preamble to the Constitution in terms of respecting our wishes is that even if they think that what we wish them to do on our behalf is not what is

best for us, they must limit themselves to giving advice and then doing what it is we want them to do for us. We have to live with the consequences of those decisions and I hope that by carrying this motion in the House and having it transmitted to the United Kingdom Government this will be another plan as has been the delivery of the petition to the Prime Minister's Office that will finally persuade the British Government to do what they should have done last January and then none of this would have been necessary because they should have responded to the Chief Minister's letter immediately agreeing to his request. I commend the Motion to the House.

Question proposed.

HON CHIEF MINISTER:

Mr Speaker, the Government will support the Leader of the Opposition's motion. I think that it is a subject matter which is important enough to be debated in this House and indeed to be made the subject matter of a motion. I say that because the same was true between 1985 and 1994 of the Moran proposals and of course it is worth just recording that nobody, including the Leader of the Opposition, thought it necessary or appropriate to bring a motion calling for the formal rejection of these proposals which were agreed should be rejected. The Leader of the Opposition has given an explanation about why it was not debated, the Moran proposals themselves could not be debated, this confidentiality business but certainly we all know that they existed, at least Governments between 1985 and indeed the Leader of the Opposition at the time may not have known that they existed, I do not know, he did not make that clear whether Sir Joshua Hassan informed him of the existence of the proposals albeit not of the details, but in any case, even when he discovered their existence he limited himself to doing what I am now doing which is to try and persuade the British Government to reject them and he did not consider in 1992 or 1993 that it was necessary to arm himself with a motion in this House and I do not say that in any sense. I think to be armed with a motion in the House helps, whether it would be sufficient additional plank to add to the petition, to add to the fact that every political party in Gibraltar has called for it, as if all of that were necessary, given that the British Government already know well what the position of everybody in Gibraltar is.

Mr Speaker, I think it is instructional to consider the terms in which Douglas Hurd eventually formally rejected

in November 1994 the Moran proposals of 1985. He was asked by a Member of the House of Commons "if he would clarify HMG's policy over the 1985 Moran proposals on the future of Gibraltar following recent Spanish statements and if he will make a statement" to which he answered "we told the Spanish Government at the last Brussels Process meeting in March 1993 that we could not accept the proposals put to Sir Geoffrey Howe by Mr Moran in 1985, the Moran proposals, as a basis for talks because of their pre-condition that sovereignty would be transferred. That position has not changed. Our commitment to the people of Gibraltar is clearly set out in the Preamble to the 1969 Constitution. We will never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another state against their freely and democratically expressed wishes". In other words, what Mr Hurd was saying without using the word "reject", without saying that they are not acceptable to the UK, what he was actually saying was that the UK could not accept them because of their commitment to the Gibraltarians. Mr Speaker, I believe that is the very least, which is the same, that needs to be done in relation to the Matutes proposals which as the hon Member says are very similar. It is interesting that the hon Member says that the basis for the proposals are no different. I am not sure he has had access to the whole document, if he has not I would happily give him one, but if he has he will have noticed that Sr. Matutes claims that what is new precisely is the basis because what he says is that this is the first time that the proposals have been put in the context of the legal base of the Spanish Constitution. That is what he alleges in the document constitutes the novelty as opposed to the Moran proposals which had just been a general floating of the concept without anchoring them in particular clauses of the Spanish Constitution and without explaining the organic nature of the Spanish Constitution that would permit the incorporation of these proposals in the context of specific Spanish constitutional provisions.

Mr Speaker, the Matutes proposals are intrinsically and exclusively about a transfer of sovereignty and I think the point has to be made that although Sr. Matutes delivered a four-page speech on the 10th December 1997, the so called proposals themselves are three lettered paragraphs and everything else is comments and are not to be regarded as part of the proposal. Given that the Matutes proposals are intrinsically and exclusively about a transfer of sovereignty there is no other aspect, no other content in the proposals. Given that Her Majesty's Government is committed to respect our wishes on the

question of sovereignty, given that we have made our wishes clear, all of us here in Gibraltar have made our wishes clear, it is not therefore possible for HMG to square a circle other than by indicating at the very least what Hurd indicated was that the UK cannot accept them because of the sovereignty commitment, because of the commitment to respect our wishes which wishes have been articulated. And given that those are things that the British Government say frequently anyway, albeit in isolated bits and pieces... the United Kingdom is constantly reminding us about its commitment to the Preamble, it is constantly reminding us about its commitment to our wishes and therefore all it needs to do is put the three sentences that it habitually says anyway in one paragraph, Hurd style, and that would amount presumably to the same comfort and satisfaction as indeed Gibraltar derived from the Hurd style of "rejection".

I think, Mr Speaker, since we are debating the matter generally, why it is that we consider it important that these proposals should be rejected in the sense of Britain making it clear that there is no mileage against the wishes of the people of Gibraltar and that therefore Britain cannot accept them. We have expressed the view, in the past on several occasions, that leaving them on the table is not dangerous because of any risk that they might be implemented, because Mr Speaker, it is important to take account of what the United Kingdom's position actually is in relation to the Matutes proposals. We think that the damage, the danger, of Britain not indicating in unambiguous language its non-acceptance, is not that there is a danger that they might be implemented, but rather the danger that time is being wasted because as the Leader of the Opposition has articulated in a slightly different way, Spain is entitled to believe that at least it is in the right ball park to play the game if its parameters are allowed to lie on the table and it is not indicated to them that they are not parameters which, if they lie on the table, that it is not possible that such parameters can lead to constructive, reasonable, fruitful dialogue. In a sense it is a destruction. It delays the day when Spain might be persuaded to take a more moderate view of her position and her aspirations in relation to Gibraltar. It needs to be also borne in mind that the position put by the Foreign Secretary on the doorstep on the 10th December 1997 with Sr. Matutes standing by his side, he said "I can certainly confirm that Mr Matutes presented the proposal in full detail and that he presented the Spanish case with vigour. I think Mr Matutes will also agree that I was equally firm in stating the British case and

the British position is restated in the Declaration we have read. Both before and during the meeting I have made it clear that Britain will not compromise on the issue of sovereignty against the wishes of the people of Gibraltar. Both Britain and Spain are democratic countries with strong democratic institutions, that is why we take the firm principle that the future of Gibraltar must be one that is decided by the people of Gibraltar themselves". He was then asked by an ingenuous journalist "Could the Foreign Minister please give a message for the people of Gibraltar, the heroes of the long-standing Gibraltar problem" and he answered "I think I have just done that in my very last answer in which I made it very clear that for Britain there can be no compromise on the principle of sovereignty against the wishes of the people of Gibraltar and I have repeatedly expressed the view that it is important that the people of Gibraltar should never again be put under siege and that we should try and build a positive relationship. That is why, as part of the process, Britain would wish to table proposals that will assist in economic cooperation and help in building confidence and trust". Therefore, there is in fact no question of these proposals being acceptable to Britain. Mr Cook has, in effect, said as much on the doorstep of Carlton Gardens and I think all that is now required is for the same sentiment to be put by way of a formal response to the proposals at the next round of talks.

More recently the British Ambassador to the United Nations, in answer to the Spanish statement in October of this year said "British sovereignty over Gibraltar was clearly established in the Treaty of Utrecht. This legal fact is incontrovertible. Moreover, the British Government stands by the commitment to the people of Gibraltar contained in the Preamble to the 1969 Constitution of Gibraltar which states..." and then he goes on to say "Spain's offer to integrate Gibraltar into Spain which Sr. Matutes restated here earlier today can only prosper with the freely and democratically expressed support of the people of Gibraltar". In a sense, that is what Douglas Hurd said when he said, of the Moran proposals "look, whatever we think of them, we cannot accept them". Therefore, I think that Britain's position in relation to the text of the substance of what its commitment is is the correct one. What it now needs to do is to convey that position, not on the doorstep of Carlton Gardens, not in the United Nations, helpful as that is, but in the same process and as part of the same process in which the proposals were put formally to him. I think it is worth, for the benefit of those persons who

have not read the Matutes proposals, just summarising what the proposals are. People may be labouring under the misapprehension that they are a long and detailed and full of bits that are better than others. The reality of it is that the proposals as put in the 1997 Brussels meeting and as subsequently repeated in the "Cortes" in Madrid subsequently by Sr. Matutes is limited to just three essential points. One is that they propose an autonomous statute for Gibraltar, within the Spanish state and under the Spanish Constitution, similar in political and administrative autonomy to the Spanish autonomous regions, that is point one out of three. Point two, is that they are willing to negotiate a preferential regime for Gibraltarians so that we as individuals, not as territory, as individuals could choose British nationality, Spanish nationality or dual nationality. That is the second of the three points in the proposal. The third and last point in the proposal, and there are no others except those three, is that as a guarantee of compliance with these principles, Spain would be willing to accept a transitional period during which sovereignty of Gibraltar would be exercised jointly by Spain and the United Kingdom, prior to the definitive transfer of sovereignty to Spain. When I say that in a nutshell is the proposal, I think a nutshell is unnecessarily derogatory, that is the proposal. There are then six lines which explain what each of those things mean but that is the proposal. There is no other part of the proposal. During the speech in which he formally outlined these proposals Sr. Matutes also restated Spain's formal and traditional claim which he described as "permanente and irrenunciable", permanent and irrenounceable. He asserted in the speech that went with the presentation of the proposal that as Spain is now a democracy it is no longer necessary or appropriate for Her Majesty's Government to continue to respect its commitment to the wishes of the people of Gibraltar. He recognised that there was no solution that could be imposed by force or could be imposed on the people of Gibraltar, the so-called principle of consent and of course that is a helpful first step. To the extent that Spain's position until that time had been that Britain should hand over Gibraltar to Spain whether or not the people of Gibraltar consented, that Sr. Matutes should now say that he recognised that there could be no solution to the sovereignty claim which was imposed on the people of Gibraltar, that was a welcome novelty. But of course it has got to be remembered that whilst it is a helpful, apparent commitment to the principle of democratic consent, it was not part of the proposal. The proposal itself was inevitably and inescapably an

immediate jointly Spanish Gibraltar followed by an inevitably wholly Spanish Gibraltar. Therefore, his apparent adherence to the principle of consent did not extend to the ultimate outcome which would need to be a Spanish Gibraltar and helpful as though the adherence to the principle of consent as a principle is, and I recognised publicly at the time, and I recognise again here today, that it is an interesting novel constructive step but no more than that in the right direction. Its full democratic value was somewhat demonetised, somehow diminished by the fact that it came in the company of threats as the consequences of non-acceptance of these proposals. If Sr. Matutes had said "Look, there can be no change in the sovereignty of Gibraltar without the consent of the people but our claim is not going to go away and they can either consent to our proposal or not and if they do not they have to stay as they are", we would not have liked that either but at least it would have been a genuine adherence to the principle of consent. Regrettably, Sr. Matutes could not resist the temptation to spell out in detail what would be the consequences of us failing to exercise our newly-given right to consent in the manner in which they expect and the Matutes document itself actually spells out the consequences of non-acceptance by Gibraltar of these proposals. It is a recognised valuable contribution to the future that Sr. Matutes should adhere to the principle of consent. It is diminished in its value to the extent that it comes coupled with a threat. Mr Speaker, I think we would all in this House subscribe to the view that in a democracy, unacceptable proposals do not become acceptable simply because they are accompanied by threats. I do not know if the time will come when some future generation of Gibraltarians will be left with no alternative, having been brought to their knees, to capitulate to the Spanish ambition over Gibraltar. But if it does, and if it does happen, no one should delude themselves into believing that they have participated in a democratic process, still less one in which the genuine concept of consent had been recognised.

Mr Speaker, the Government have urged Her Majesty's Government to indicate to the Spaniards that the proposals cannot be accepted by the United Kingdom. That they are unacceptable to the United Kingdom and they should do so in language similar in effect to that used by Mr Hurd when rejecting the Moran proposals and that that would suffice. The Government of Gibraltar remain ready, able and willing to participate in talks with Spain provided that this is on the terms that we have issued which are that they should be safe, meaning that

nothing can be agreed at those talks in relation to any matter affecting Gibraltar, not just sovereignty, over our heads and that they should be dignified by which we mean that we should have a proper voice, separate voice, of our own to speak for ourselves at those talks. It is not reasonable for Spain to pre-ordain the parameters of talks by conditioning them to her proposals. Nor is it reasonable to regard rejection of her proposals as an act of provocation or an obstacle to talks. Even if one does not call them talks, even if one wants to go further and call them negotiations, I have not been a negotiator all of my life but I am not aware that it is a conventional technique of negotiation that the parties start the process without asserting what their position is in relation to the opponent's opening position. In a negotiation what normally happens is that one party comes to the table with its proposals and the other says that is not acceptable to me and the other says well this is my proposal and the other says that is not acceptable to me but nevertheless we are going to talk. For Sr. Matutes to say, as he has recently said in respect of my interview in ABC, that it was provocative simply because I asserted our desire and our right to exercise jurisdiction and control over our waters, is not reasonable. What is provocation is that Spain should not limit herself to stating her position, which is not provocation, what is provocation is that she should accompany a statement of her position with the threat of Plan B. It is the threat of Plan B that is a provocation and not the simple assertion of our position in the matter which ought to be a provocation to nobody even though they may disagree with it.

Mr Speaker, the search for a solution must be based on the foundation that the principle overriding factor is the consent and wishes freely and democratically and without pressure expressed by the people of Gibraltar and that only the people of Gibraltar can decide their own future as the Foreign Secretary told Sr. Matutes on the 10th December 1997. Those are the democratic parameters of dialogue and I much look forward, if possible, to participating within those parameters in constructive dialogue with Spain.

HON J J BOSSANO:

Clearly, Mr Speaker, the latter part of the contribution of the Chief Minister is one with which we are not in agreement, but of course, that is not required in order to support the motion. I do not want to dwell a great deal on that part but I feel that we have to respond

since the points have been made. I do not know whether they are now going to be better equipped to attend the talks in a dignified manner after the 1st January, given that their salaries are going to make them more dignified that they have been until now. Being dignified obviously is something that carries a great deal of weight with the Chief Minister.

The fact that these proposals have been made and are not rejected is serious because they are not proposals that the Spaniards have made out of some whim. The British Government, in answering the last time the matter was raised in the House, Joyce Quinn, in answering, said that they were studying the proposals as they are required to do by the terms of the Brussels Process. Therefore, attending the Brussels Process, whether in a dignified or non-dignified manner or whatever label one wants to put to it, is accepting that one is participating in a forum which requires one, according to Joyce Quinn, to study proposals for the transfer of sovereignty, because the issues of sovereignty have to be discussed. It is all very well for the British Government to say as the Chief Minister has quoted they said in the United Nations in October that their legal title under the Treaty of Utrecht was not in doubt, but of course, by saying their legal title under the Treaty of Utrecht is not in doubt they conveniently forget that for the first time ever they accepted in 1984 the Spanish view that there were issues of sovereignty not covered by Utrecht and that is why the issues were in the plural. This is what the Spaniards are able then to use against us when they question whether we have got a title which is legally enforceable in territorial waters or a title which is legally enforceable in the isthmus. The Moran proposals from the beginning drew attention to the fact that the issues were more than one and so do these proposals. That had never been there before 1984, the British Government had never considered that point before 1984, they considered it for the first time then. We will always remember, those of us who were around at the time, how the Convent issued a press release where it appeared in the singular and when they were challenged as to why it was that the Spanish version that had been published in Spain had "issues" in plural and the British version that had been issued in Gibraltar had it in singular the explanation, which was rather hard to swallow, was that it was a typing error. Some typing error. That was in 1984. The fact that the proposals in the terminology used by Douglas Hurd are not acceptable to the United Kingdom because they are not acceptable to us, one can argue that that is the democratic principle but the

British Government's democratic principles and the British Government's commitment to respect our wishes is constrained and limited only to respecting our wishes in terms of a transfer of sovereignty. That is what the Preamble to the Constitution says. The fact that the proposals are not acceptable even as a starting point is not something over which they accept that we have got any right to tell them what to do because there is a conflict. There is a conflict between a requirement to accept and study proposals which ought to be turned down flat on the spot. In our view there is a conflict between the terms of reference of the Brussels Agreement based on UK Resolutions which are unacceptable to us and the commitment that the United Kingdom gave our people after the 1967 Referendum. There was a shift in the British position post the Referendum, post the UK Resolutions. Therefore, when the British Government say in the context of receiving proposals for joint sovereignty as a transitional position before full Spanish sovereignty is attained, that they are going to put counter proposals for economic cooperation and to produce confidence-building measures, what do they mean by that? Against the background and against that context it is only capable of meaning one thing. It can only mean one thing to the Spanish side that is listening to that. If I am putting proposals in a negotiating forum and I know that the problem is how does one sell the proposals to the Gibraltarians, because unless we can sell it to a majority of the Gibraltarians, we are not going to be able to implement this and the other side says "Well, why do we not have proposals for economic cooperation to build confidence and trust?" For what purpose? For the purpose of brainwashing our people into accepting what they are not prepared to accept now. That element is the element that continues to be there and continues to keep the Spanish hope alive. When the Spaniards react as they do is when the Government of Gibraltar say, on occasions, that there is no possibility whatsoever that these proposals are unacceptable. Then when they see that the door is being totally shut they move from trying to persuade us of how well off we are going to be with them, to threatening us with how badly off we are going to be without them. But that is when one shuts the door firmly on their noses but as long as one gives them the slightest hope that then maybe with the passage of time and by talking and by dialogue and by getting to trust each other, then maybe enough of us can be persuaded to sign on the dotted line. Then that alternative route which they defend on the Government side as being perfectly consistent with democracy, well all I can say Mr Speaker is that nobody ever suggested

that there should be periodic referenda post integration to opt out. The decision that is taken is a one-way ticket which is irreversible. We cannot stop any future Gibraltarians if they choose to do so from handing over our country to our neighbour, because as far as we are concerned, this is not a question of Spanish proposals to reintegrate us, it is a question of Spanish proposals to annexe us. We cannot stop people in the future deciding to give up their country if they want to, there is no way of stopping it, but certainly our job as far as we are concerned, is to campaign to persuade people not to do that and to do everything in our power to dissuade them and to support all the measures that make it less likely that that will happen because we do not want it to happen. Because we do not want it to happen, we are not going to make it easy for it to happen. We are going to do everything in our power to make it difficult. If the Government Members are as committed to seeing that this does not happen as we are, then it is not a question of saying "well, if the majority want it, so be it". If the majority wanted to integrate with Morocco tomorrow, what? So be it? Or if they want to integrate with Portugal? It does not arise. We have got a claim from a hostile neighbour, nobody can guarantee in Gibraltar what would happen to our people if they got away with what they have been trying to do for so long. We have seen hundreds of cases in history of people not having their rights respected once they sign on the dotted line. Is it not the case that the rights of the people of Hong Kong depend on the goodwill of China and that the United Kingdom can do absolutely nothing and will do absolutely nothing except written moans if in fact their civil rights are suddenly removed. What are they going to do? Sanctions against the Peoples Republic of China? We all know that in the real world, this is the reality, people are abandoned and betrayed and have been throughout human history. Therefore, we must not put ourselves in a vulnerable position by wanting to appear to be more reasonable. Without wanting to go further down the route of the area where there are disagreements between us, at least we ought to concentrate on whether there is agreement and I sincerely hope that the strength of feeling that is reflected in my having to bring the motion to the House which I wish would not have been necessary, I would have much preferred, frankly, that the Government would have been able to announce that I put a question some months ago, that they had had a reply from the United Kingdom Government and I note that although in my initial remarks I said I hoped that the Chief Minister would be able to tell us whether in fact Joyce Quinn...

HON CHIEF MINISTER:

Yes, it is true he did ask me if I could say whether I had had any explanations as to the United Kingdom's position and I will tell him. I will tell him the explanation that has been given to me. I think I have said so publicly before but the hon Member may not have heard me.

The British Government's position is simply that the Matutes document contains two options - keep talking and we will carry on being nice, although carry on being nice is an extremely relative term, but if our generosity is snubbed the alternative is Plan B. That is why when I was asked recently by journalists in Algeciras whether I doubted that Plan B actually existed, I said no. They may not have noticed, but the details of Plan B was actually announced by Sr. Matutes on the 10th December 1997, both in London and in the Spanish Parliament. The United Kingdom's position is "Well, what can we do, what position can we adopt which at the same time enables us to honour our commitment to the people of Gibraltar without provoking what they regard as an inevitable backlash from Spain in the event that they..." to use the hon Member's words "...shut the door completely on their face". That is the dilemma that London thinks it faces and that is the reason why they do not. At the end of the day as the hon Member has said to himself this community makes choices and then is required to suffer to live with them. The fact is, however, that in a democratic Europe involving three democratic countries the consequence of exercising a choice should not be Plan B. The consequences of exercising your choice should be "I recognise that you have exercised the right of consent which I generally recognised in your favour in the last part of my speech to your Foreign Secretary on the 10th December 1997".

HON J J BOSSANO:

Mr Speaker, I am grateful for that explanation. In fact, I have to say my view is and has always been that if we want to be given the right then the United Kingdom must limit itself to giving us advice of what they think is best for us but at the end of the day they must act as we want them to act. Therefore, the United Kingdom must necessarily reflect what we want them to be even though they may point out to us all the risks that that entails. We take those risks on with open eyes. Let me say that I agree that it is the first time that the Spanish Government has said that they recognise that changes in

our sovereignty require our consent but in fact that is not what Sr. Matutes said. What Sr. Matutes said was that it had always been the position of Spain, that it was a myth, he said in his statement, to suggest that Spain had ever wanted a solution imposed on the Gibraltarians.

HON CHIEF MINISTER:

I think the reference to "myth" related to interests, not to wishes. That is my reading of the document. He obviously has it, I am quite happy to sit with him and go through it together, but my understanding of it is that what he was saying was it is a myth that we would not take your interests into account, but in so far as wishes are concerned, my understanding of it is that it is the first recognition, but it is a matter of interpretation.

HON J J BOSSANO:

I believe, Mr Speaker, that what Sr. Matutes said in his statement was that that had always been the Spanish position although I do not believe it to be true. I believe he said it but I do not believe that it is true that that has always been the Spanish position. The closest that Sr. Moran came to that position was to say, in a public statement, that if the British were prepared to hand over Gibraltar to Spain on a plate, without the consent of the Gibraltarians, he would accept it as Foreign Secretary but that he did not think it would be a good business for Spain to get it in those circumstances. That is the closest that I have ever heard a Foreign Secretary before Sr. Matutes mentioned the involvement of the Gibraltarians in the decision-making process. I agree that the Spaniards have got absolutely no right to take the view that the choice is that either we accept what they want or they get nasty with us and that that is a respect for the democratic process. But it is not something that the Spaniards have ever hidden. They have always made it very clear that their policy in terms of Gibraltar was the stick and the carrot, on the premise that they genuinely believe that the British agreed in 1984 to implement the UN Resolution of 1973 and whether we like it or we do not, if the Spanish Government believe that there is a UN Resolution... look at the business that we have been witnessing in the last few days on the news over people defying UK requirements and resolutions. As far as the Spaniards are concerned, 25 years ago they got a Resolution from the United Nations, non-binding of course, but they got a Resolution from the United Nations which the United Kingdom supported. The

Resolution of 1973 was co-drafted. It may not be binding but if I agree a text tomorrow on a motion and we all vote in favour in this House, if we have got a motion as we had before on Father Devlin where we are co-sponsoring it, this is what happened in the United Nations in 1973. The Spanish Ambassador and the British Ambassador co-sponsored a consensus motion on negotiations over Gibraltar's future. It may not be binding, but it is certainly not an unusual expectation on the part of one of the co-sponsors to believe that the other co-sponsor intends to deliver, intends to genuinely pursue that route. Therefore, what the Spaniards are saying is, after 25 years they happen to believe they have been generous with us in opening the frontier and in letting traffic flow across, on and off, across that frontier, they believe that they have been making the gestures. The fact that we do not share their views is neither here nor there, that is how they see it from there. They believe they have been doing all the good things and we have not done anything in exchange and the United Kingdom has not done anything in exchange and consequently the Spanish approach, which I think is so dangerous for us is that they are able to go round the world telling people "Well, look, we are the only ones that make proposals". The Chief Minister said if one wants to call it negotiation, if one side rejects the proposal, yes, but if one side rejects the proposal the normal thing is that they make counter-proposals and the United Kingdom is not in a position to make counter proposals. The United Kingdom is not in a position to say "well, look, we propose that the autonomous statute should be changed and that instead of being like the Basque country, it should be like Geneva in the Swiss Confederation, that is our counter-proposal". They are not in a position to say "we believe the joint sovereignty should be not indeterminate but indefinite or that it should be subject to referendum." All those things, if they happened, would be in my view totally consistent with the commitments that the British Government has given to the Spanish Government going all the way back to the 1973 Resolution. But it is not something that they ever had the support of people in Gibraltar to give and I think that is the problem. The problem is that on the Spanish side they genuinely feel that the British side have been leading them up the garden path for a quarter of a century and if they decide that they have had enough, they are going to decide and they are going to make us pay the price for it and not anybody else. It is all very well for the United Kingdom to point out the risk that exercising our freedom of choice involves but they are naturally responsible for putting us in this predicament. When they landed the

AACR Government with the Brussels text in 1984 the Government of Gibraltar were not in a very strong bargaining position to tell them what to do with the Brussels proposal. They had major problems like the MOD closing the dockyard down at the same time. Therefore, I think that the sooner we can get the United Kingdom to put an end to the whole damned system once and for all the sooner we are going to extricate ourselves from the difficult situation we are in. If it was not for those parameters, Mr Speaker, then everything that the Government say about wanting to develop dialogue and understanding and good relations and good neighbourly relations and all the rest of it with which nobody has ever disagreed in Gibraltar, all of that would be tenable and defensible except as part of a process which has already got the final landing point marked and has had it marked from day one. These proposals are not proposals of Sr. Matutes in a vacuum. They are the direct, logical, inevitable consequence of the rejection of the 1967 Referendum by a vote of two to one in the United Nations and of a Resolution, sponsored by the United Kingdom and the Kingdom of Spain, calling for a joint negotiating process leading to our decolonisation. Obviously the Spaniards are going to be miffed if they see that what they thought they had gained 25 years ago, not only has not given them the goods that they expected it would deliver but they are slipping from their fingers altogether. If they see they are going to be losing what little advantage they think they had gained initially and which has produced so little for them, they are bound to make threats to constrain our right of choice. We must send the message back, through the British Government, that the Chief Minister sent recently when he spoke in Cadena Ser. If the position of the Government of Gibraltar is to say to Sr. Matutes that he either shuts up or carries out his threats, then the best way to make that known to him is to have a complete rejection of his proposals and then let us see what he is capable of doing. I will now give way to the Chief Minister.

HON CHIEF MINISTER:

Just to clarify the point that we were debating about the content, if Mr Speaker will allow me to translate loosely, rather than read in Spanish: "The Gibraltarians can rest at ease and forget the absurd propaganda about the supposed intention of Spain to force a solution against their interests." Then in the next paragraph it starts talking about wishes and therefore if that is the sentence to which the hon Member was referring, then it

is by reference to interests and not wishes... I am grateful to him for giving way.

HON J J BOSSANO:

Thank you, Mr Speaker, I have nothing further to add and I commend the motion to the House.

Question put. The motion was carried unanimously.

Absent from the Chamber: The Hon R R Rhoda
The Hon T J Bristow

ADJOURNMENT

HON CHIEF MINISTER:

Mr Speaker, as we have ended on a constructive note it becomes easier for me to rise to my feet and wish all Members in the House a happy Christmas. The Chronicle has already pointed out this morning that it will be a prosperous new year so I will not bother to repeat that. We can convene again in the new year, can I now therefore move that the House do now adjourn sine die.

Question put. Agreed to.

MR SPEAKER:

It has always been traditional for the Speaker also to wish the Members of the House a happy Christmas and a prosperous New Year. Whether traditional or not I wish jointly with the Clerk and the staff of the House to wish the individual Members the very best but I would also like to include the members of the press, the media and the public who attend these proceedings, I think it is only fair.

The adjournment of the House was taken at 1.05 pm on Thursday 17th December 1998.