GIBRALTAR

HOUSE OF ASSEMBLY

HANSARD

24th April, 1998
(Vol. II)

(2nd, 13th and 16th July, 1998)

THURSDAY 2ND JULY 1998

The House resumed at 3.30 pm.

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 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 Minister for the Environment and Health 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 Minister for the Environment and Health laid on the table the Drugs (Misuse)(Amendment) Regulations 1998 - Legal Notice No. 45 of 1998.

Ordered to lie.

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

(1) The Income Tax (Allowances, Deductions and Exemptions) Rules 1992 (Amendment) Rules 1998 - Legal Notice No. 48 of 1998.

(2) Statements of Consolidated Fund Reallocations approved by the Financial and Development Secretary (Nos. 9 to 11 of 1997/98).

(3) Statement of Improvement and Development Fund Reallocations approved by the Financial and Development Secretary (No. 5 of 1997/98).

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

SUSPENSION OF STANDING ORDERS

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

Question put. Agreed to.

THE TOBACCO ORDINANCE 1997 (AMENDMENT) ORDINANCE 1998

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Tobacco Ordinance 1997 be read a first time.

Mr Speaker, the purpose of this Bill when read together with the amendment that I propose to move at Committee Stage is to amend the Tobacco Ordinance 1997, so that the reporting requirements for wholesalers in terms of the supply of tobacco and the import and export offences that are created

should apply only to cigarettes and not generally to tobacco products as it presently specifies. I think that this was something that might easily have been restricted in that manner at the time of the original Ordinance which was designed to deal with a particular state of affairs that really affects only cigarettes and for that matter certain brands of cigarettes but as it was impossible to target just certain brands, the next best things is just to limit it to cigarettes. That is the effect of the Bill which really deals with the amendments of Section 22 which itself deals with.....

MR SPEAKER:

You can proceed if you want, but at this stage there is no need for you to give any explanation, it is the First Reading.

HON CHIEF MINISTER:

I beg your pardon.

Question put. Agreed to.

SECOND READING

CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time and I would ask the House to take notice of what I said on the first reading and consider that as my contribution to the second reading if that is acceptable to the hon Members. 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 wish to make a general point about the Bills we have before the House as a whole in the general principles, rather than repeat it for each one and then I will deal specifically with this Bill. We have got quite a number of Bills for one sitting of the House and I think the position in the House has been that Bills are not always taken in the same meeting. Generally speaking, when there is a need, administratively to act quickly it is taken in a sitting but quite frequently they are left

between one meeting and the next so that the explanations that are given at the second reading can be taken into account when we come to the Committee Stage. If we have 20 Bills and we go straight from the second reading into the Committee Stage of 20 Bills it seems to me that we are constrained in the effectiveness with which we discharge our obligations to scrutinise the Bills that are brought to the House. Presumably, the reason why it is being brought here is because the Government prefers to have them scrutinised. Again, we have had also a situation where the agenda of the meeting keeps on being changed and the last change was 24 hours ago and we have had a very large Transport Bill, of which the notice has not yet expired, but which clearly we cannot tell until we spend some time on it what is new and what is not new and what the effect of what is new is on what was there already. I am making this point because although the notice required is only five days, it makes a difference if we are given five days in which to look at one or two Bills or five days in which to look at many more in the same period of time.

In this particular Bill which we have had since March, the Explanatory Memorandum says that the purpose of the amendment is to restrict the application of the Ordinance that was passed last year to cigarettes rather than apply it to all types of tobacco. We cannot understand why it is that they needed to bring the Bill because in fact the amendment is being made in respect of the returns that are required under Section 22 of the 1997 Ordinance. Section 22 of the 1997 Ordinance says, "that separate returns for each day containing separately for each type of product prescribed by regulations by the Collector of Customs." So it seems to me, that is how we read it initially in October last year, that the Ordinance created the enabling power to require daily returns from every type of product and then retained the right for the Government to narrow that requirement to whatever type of product was specified in the Regulations made by the Collector. The Regulations made by the Collector which this Bill seeks to repeal specified nothing because the Regulations that were brought in in February 1998 said, "For the purpose of Section 22(1)(a) of the Tobacco Ordinance 1997, daily returns relating to tobacco shall be furnished to the Collector of Customs according to the provisions

of that Section". The provisions of that section simply said, "The Collector can make regulations", and the Collector makes regulations saying, "I have made regulations in accordance with the provisions of that Section", a totally circular regulation that took us back to the starting point. It seems to me the Government could have chosen that the Collector when he actually made use of the enabling powers of section 22 could have said, "For the purposes of Section 22 the type of product on which daily returns need to be made are the following....." And that has always been the power contained in the original Ordinance, the Government chose not to make any use of it in February. They could have made a use of it since February by bringing in a new regulation amending the February one and therefore we do not know why it is that they feel a need to change the principal Ordinance and revoke the Regulations through the Ordinance in order to achieve what the Explanatory Memorandum and what the Chief Minister's contribution says is the intention of the Bill. The further amendments that are being made, and they are amendments to section 9, provide that in sub-section (1),(3,)(4) and (5), the word "tobacco" should be substituted in each case by the word "cigarettes". So we are talking there about the importation of tobacco into Gibraltar and that it is unlawful for anybody to import tobacco without a permit. We are now saying, as a result of the amendment, that it is no longer unlawful to import tobacco without a permit. It is only unlawful to import cigarettes. Why give somebody a permit to import cigars if it is not unlawful to import cigars without a permit? It is a nonsense amendment, even though we have only had ten minutes to look at it because the amendment will have the effect of changing the law so that the law will now read, "It shall be unlawful for any person to import cigarettes into Gibraltar in a commercial quantity save under the authority of a permit issued by the Collector of Customs". Is it then that permits will not be required to import cigars? In the next section which is being amended it says, "The Collector shall not issue an import permit in respect of a commercial quantity of cigarettes to any person other than the holder of valid wholesale licence". Does it mean that the valid wholesale licence is required only for cigarettes and not for other types of tobacco? If that is the case, surely there must be consequential repercussions in other parts of the Ordinance? If we look at the Ordinance

it seems fairly obvious that the Ordinance has been very badly drafted because although in the Ordinance it says that tobacco includes tobacco of every description whether manufactured or not, there are sections where the heading talks about tobacco and then the clause talks about cigarettes. If we look, for example, at the storage and transportation of tobacco in Part IV of the original Ordinance it says, "Storage of Tobacco: It shall be unlawful for any person to store cigarettes". Why is it then called "Storage of Tobacco"? "Transportation of Tobacco: It shall be unlawful for any person to transport or carry cigarettes in commercial quantities." "Possession of Tobacco: It shall be unlawful for any person to be in possession of cigarettes". It is quite obvious that at that stage whoever drafted this has forgotten the distinction between tobacco and cigarettes and was using the two terms interchangeably. But in the area of exportation, which is in Section 11, it says, "It shall be unlawful for any person to export or attempt to export tobacco from Gibraltar", not "cigarettes" and that is not being amended. Part III where we talk about importation and exportation of tobacco the amendments that are being moved by the Chief Minister do not affect the restriction on the exportation, they affect the restriction on the importation. Section 9 which is what this amendment seeks to change is importation of tobacco and we have a heading that says "Importation of Tobacco" and the clause is being changed so that it is now unlawful to import cigarettes but not other types of tobacco. However, Section 11 which deals with exportation of tobacco, is not being changed. Therefore, it will still be unlawful for any person to export or to attempt to export tobacco from Gibraltar in commercial quantities save under the authority of a permit by the Collector of Customs, because the original Ordinance was done in a way where the distinction between tobacco and cigarettes was not drawn and the amendment is seeking to correct that mistaken drafting, presumably, because it was always the intention to Bill for cigarettes and not for the rest, by amending some sections and not others, I do not think it does what it seeks to do and I would have thought that if it is a question of the daily returns then that could be put right by the use of the existing regulations which came in in February 1998. Of course if what the Government wants to do is to change not just the question of daily returns but the whole question of requiring

import permits and export permits for other types of tobacco than cigarettes then I think they need to amend more than they are doing already. At least, that is our initial reaction after hearing what the Chief Minister has said and after reading across the amendment that has been circulated against the sections of the Ordinance. In fact, I would have thought that where the question of Wholesale Licences are concerned, which is Part II, Section 3, it says, "It shall be unlawful for any person to sell tobacco by way of wholesale dealing save under the authority of a licence by the Collector of Customs". The corresponding sections in Part III are because the people that have got Wholesale Licences are the people who have got Import Permits. The way the amendment appears to function in conjunction with the original Ordinance is that all the things that would have been unlawful under the original Ordinance for any type of tobacco are not being made lawful in respect of tobacco which are not cigarettes. Some of them continue to be unlawful. I see the Chief Minister is saying yes by nodding his head but I am not sure that that is what they intend to do since it is quite obvious that whatever it was they intended to do in October 1997 was not what they put in the Ordinance and there is no indication that they are any nearer to hitting the target with the amendments that they are moving today on the basis of writing in the amendments that we have been given notice are going to be moved. I think perhaps, unless there is a great urgency for this, they should take a second look to see whether a further amendment is required to make this function.

HON CHIEF MINISTER:

Mr Speaker, if I could just deal firstly with the general point that the Leader of the Opposition made about the amount of notice of legislation. I can only say to the Opposition Members that although occasionally Bills are published with the minimum period of notice, which used to be the norm when they were on this side of the House in respect of almost all legislation, our policy is to publish the Bills as soon as possible. For example, the Tobacco Ordinance (Amendment) Ordinance that we are now debating was put into the public domain on the 19th March 1998. That is several weeks ago now, the 19th March, nor has the legislative procedure changed from what it was when they were in Government except

that we now as a matter of policy try to give the Opposition as much notice of the legislation as possible. It seems to me that notwithstanding these obvious improvements to the ability of the Opposition to do its very important function in this House, which the hon Member has not pointed out the improvements in the advance publication of legislation, it seems to me that really what he is saying is that there is now so much more legislation being brought to the House. Well that may be so, there are seven Members opposite, we will see during the course of the afternoon to what extent the burden of considering this legislation to then take it through the House has been fairly shared between the seven of them and to what extent the problem lies in the fact that the Leader of the Opposition has wanted to deal with them all himself. If that is his problem, he will understand that I am less sympathetic to it. The purpose of having seven Members on the Opposition Benches is that they should all partake in the legislative process. I accept as a matter of the workings of the House, regardless of the volume of legislation and it was my view when I was in Opposition, although of course I had to grin and bear it and that was, that although there are some occasions on which we need to get legislation through and the Government seek the indulgence of the House and often the Opposition Members give their consent to the Committee Stage being take on the same day, in other parliaments the legislative process is stretched out over a longer period and it is very rare for the Committee Stage of any Bill to be taken on the same day. In the House of Commons it would be unheard of for the Committee Stage to be taken, but I think, Mr Speaker, what the hon Member really puts his finger on is something that the Government feel quite strongly about and are happy to form a joint commission of Members of both sides of the House. What he is really saying is that the practices and procedures of this House, not just in relation to the legislative process but indeed I think to certain aspects of question time have become antiquated and whilst they may have been suitable for the function carried out by this House in 1969, or whenever Standing Orders were looked at, that there may now be a case to revisit together the Standing Orders of the House. The Government would certainly be completely amenable to modernising these Standing Orders so that the House functions more like a Parliament does in other democracies and

less like a sort of ritualistic rubber stamp which is what tends to happen when it is wearing its legislative hat, if not its question and answer hat, which is really a product of the fact that we get legislation through the House in one, two or three days. So if the hon Members really believe that there is merit in what I am saying, that it is time to revisit Standing Orders generally I can signal to them here and now that the Government would be very happy to. In fact, I think there is a Standing Committee on Standing Orders, it is one of the few, together with the Declaration of Interests, I think it is one of the two permanent standing committees of the House which for our part we would be very happy to activate and to look at Standing Orders not just from the point of view that the Leader of the Opposition has made but indeed other aspects of the way this House does its business which we also feel needs to be revisited.

Turning now to the Tobacco Bill itself. I do not believe that the hon Member is correct. It may well be that he has spotted an occasion in which the heading does not sit comfortably with the text. I have to check to see if he was right in that assessment but on taking his word for it, as I am on my feet, he knows that the headings are not to be taken into account when interpreting statutes and that certainly if there is any contradiction between a heading and what follows on the sections underneath the headings, then it is very well established law that the heading is disregarded for that purpose. I think he is also wrong in saying that the draftsman used the words "tobacco and cigarettes" interchangeably. It may be that he will be able to spot occasions in which a mistake may have been made, if he points one out I will give him my views on it, but certainly I can tell him that there is a distinction, there should be a distinction between the word "tobacco" and the word "cigarettes". When the policies were being issued to the draftsman and the drafts were being discussed, there were certain sections of the Bill which were designed to apply to all tobacco and some sections of the original Bill, the Bill which is now the Ordinance of 1997, which were intended to apply only to cigarettes and in the latter case the word "cigarette" should have been used and in the former case the word "tobacco" should have been used. Without saying that it is not possible to find an instance where the drafter may, I can put it no more

strongly than that, certainly the point that I am making now as I speak is that the hon Member is mistaken in thinking that from the point of view of the policy of the legislation, that there is no distinction between tobacco and cigarettes, that it was always intended that there would be such a distinction and he will see that there are many sections in the Bill which use the word "cigarettes".

HON J J BOSSANO:

Mr Speaker, if the Chief Minister has got the original Ordinance with him, and he looks at pages 506 and 507, at section 13, Transportation of Tobacco, he will see that the law says, "13(1) It shall be unlawful for any person to transport or carry cigarettes in commercial quantity in any vehicle in Gibraltar" and then sub-section (3) of that same section at the top of 507 says, "Any person who transports or carries tobacco in commercial quantity in Gibraltar in contravention of sub-section (1) above shall be guilty of an offence". Here, tobacco in (3) refers to cigarettes in (1) and here it says it is an offence to do what is prohibited by 13(1) and 13(1) does not prohibit tobacco it only prohibits cigarettes. The point that I am making is that I would have thought that if they are coming in with amendments to correct the Ordinance because the Ordinance says "tobacco" where it is intended that it should have said "cigarettes" then they ought to do it everywhere where that mistake has been made and I have just given him one example.

HON CHIEF MINISTER:

Yes, so long as the hon Member acknowledges that not all the interchangeable words are a mistake. There are occasions in which the Ordinance means tobacco as opposed to cigarettes and there are occasions in which it means cigarettes as opposed to tobacco. I will have to check with the Law Draftsman but at first sight in respect of the example that he has given me then it seems to me to be an obvious error, in other words, the section creates the offence of unlawful transportation of cigarettes in a commercial quantity. Of course, this cannot adversely affect anybody, it is just inelegant drafting because sub-section (3) does not create an offence independently of sub-section (1). Sub-

section (1) says it is an offence to do what is prohibited in sub-section (3) which is where it says tobacco. It says it is an offence to do what it says in sub-section (1). Sub-section (1) refers only to cigarettes and therefore sub-section (3) cannot be effective in creating the offence of transportation of tobacco because the offence is created by reference to sub-section (1) which deals only with cigarettes. It creates no uncertainty in the sense that the offence is created but I accept at first sight there is a linguistic inconsistency here in the language which strikes me as having been avoidable and certainly I will have the Ordinance of 1997 checked to see if the instance that the hon Member has found is the only one or whether there are others. The only point I am making to him at this stage is that he should not assume from the fact that the wrong word may have been used in one section. He should not assume from that that the Bill does not intend to distinguish in certain parts between cigarettes on the one hand and tobacco on the other because there are sections in which that is an intended distinction.

If I could take the hon Member to what he said about section 22. It may well be that had section 22 been drafted differently, it has not been drafted wrongly, but had it been drafted differently, it would have been possible to take the view that the hon Member has taken. But, given the way it is drafted, it is not possible to take that view. What the hon Member is in effect saying, if I have followed his argument which I think I have, is that given that the Ordinance says in sub-section 22 that returns will only be necessary in respect of such tobacco products as the Collector of Customs may specify, well why does he not just specify cigarettes and not specify everything else that is not cigarettes? To achieve that I think the hon Member has in effect been saying it is not necessary really in the Ordinance to say "cigarettes" because although there is no harm done in the Ordinance it is unnecessary because it can be achieved through the exercise of the regulation making powers of the Collector. Mr Speaker, that would be true if the whole of the return-making requirement were contained in sub-section (a). The power of the Collector to specify the type of product in regulation is contained in sub-section (a) and therefore limited to sub-section (a). Sub-section (b), which requires a monthly return containing such

details as are necessary to show the balance of stocks in tobacco in hand, is not subject to the same discretion on the part of the Collector. Therefore, although the Collector could use his regulation-making powers to restrict section 22 sub-section (1)(a), to restrict that to cigarettes, he has no power to restrict (b) to cigarettes and that is why it has been necessary to come to the House. If, of course, the Collector's powers to prescribe had been put in at the top before (a) in the first two lines of section 22(1) in manner that would have made that power extend to the whole of (a), (b) and (c). In other words, to the whole section, then it would have been possible as a matter of legislative device to have recourse to the argument that the Leader of the Opposition has used. In the event, it is not possible and I believe the hon Member is not correct when he suggests that in respect of the whole of section 22 this could have been done by the exercise of the Collector's powers. Finally, Mr Speaker, this amendment is not to limit the whole Ordinance to cigarettes but only to limit the making of returns and the importation to cigarettes. This has been done at the request and on the advice of the Collector of Customs. He has not extended that request to exportation. I cannot tell the hon Member why. The Government did not consider it because it has not been invited to consider it. Therefore, what the Government are bringing to the House is a Bill to restrict the Tobacco Ordinance so that the reporting requirement is limited to cigarettes and so the need for an Import Licence under this Ordinance is restricted also to cigarettes. Why it is that Customs think that we should not need an Import Permit under this Ordinance to import, but that one should continue to need it to export, is a matter that I am not equipped to answer without notice.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

THE GIBRALTAR REGIMENT ORDINANCE 1998

HON A ISOLA:

Mr Speaker, may I just ask, before the Chief Minister starts if there is in fact an order because we have jumped from the first Bill on the agenda to the first Bill on the second new supplementary agenda which was given to us on the 29th and changed on the 30th of last month. Is there an order that we can follow?

MR SPEAKER:

I will answer that. In this House everything is done by order of seniority so if the Chief Minister is bringing a Bill, he is in first.

HON CHIEF MINISTER:

Unless the hon Member should think that that is something that I have introduced. If he had been in the House when his Leader was Chief Minister he will find that the practice has been always the case and in any case and I accept that this is confusing and it may indeed be one of the points that we can look at if we decide to relook at Standing Orders. I have always found it confusing that amendments to the agenda come in the form of supplementary agendas and one never ends up with one cumulative amended document. One has always got to be looking back at the very first agenda and adding to it. It would be much simpler, it seems to me, if every time that there was an amendment to the agenda the whole thing were reprinted showing the amendment so that Members would know what is the agenda in fact at any given time. That seems to me an obvious improvement to the procedures of the House that we could introduce and which would have avoided the hon Member being in the doubt that he is.

The hon Member would also know, if he had ever sat on this side of the House, that the disadvantage that he is under is not a disadvantage that Ministers are under. Although he only gets an agenda, being a Member of the Opposition, Members of the Government continue, as they have always obtained, something called a "Crib" which sets out the order of proceedings from beginning to end and it includes all the documents. Again, that is something that has always been the case which is not

cast in stone and should continue. It contains no secrets, it is just to remind Ministers of the ritualistic language that we have to use from time to time which is not a requirement of the hon Members but certainly it does not contain any confidential or anything that would give the hon Member a strategic or a tactical advantage or disadvantage.

Mr Speaker, I have the honour to move that a Bill for an Ordinance to provide for the organisation, duties and discipline of the Gibraltar Regiment and for matters incidental thereto 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 repeals the Gibraltar Regiment Ordinance 1987, whilst re-enacting most of its provisions together with a number of amendments intended to provide greater protection for members of the permanent cadre and the volunteer reserve. A central issue to this legislative measure is the question of the powers of command of the Commanding Officer of the Gibraltar Regiment over attached UK army personnel. Hon Members may be aware that until the passage of this Bill it had been and, as we speak, continues to be the case, that if a UK Commissioned Officer, in other words, an Officer bearing a Queen's Commission from the mainstream UK army is seconded to the Gibraltar Regiment, the Commanding Officer of the Gibraltar Regiment actually has no powers of discipline over such a person and that has always been in my opinion an entirely understandable and justifiable bone of contention on the part of the Officers of the Gibraltar Regiment who regard that as being an unwarranted limitation on the powers of command, call a spade a spade, a Gibraltarian Commanding Officer of the Gibraltar Regiment, and indeed a potential threat to the disciplinary hierarchy of the Regiment. I am happy to report to the House that as part of this Bill that situation has been addressed at long last and the result will be upon the passage of this Bill that the Commanding Officer of the Gibraltar Regiment obtains those powers of command and therefore of discipline over

attached UK Officers. Mr Speaker, I can tell the hon Member that Queen's Regulations have already been amended and they formally and specifically give the Commanding Officer the same power over secondees from the UK as the secondee's own UK Commander would have had over him. Any UK soldier attached to the Gibraltar Regiment will still be subject to the Army Act and will therefore retain the same rights of review and appeal as he would have if his case were being dealt with by the CO of the UK Unit. I think that is worthy of some explanation to the House. Although the Commanding Officer obtains powers of discipline internally, in a Regimental sense, if there is a Court Martial, the Court Martial takes place subject to the Army Act, it means that the first stage can take place in Gibraltar. The next stage, the Appeal Stages, the Review Stages, would then in the case of a seconded Officer take place in the United Kingdom. Whereas in the case of a Governor's Commissioned Officer the whole of the procedure is in Gibraltar and the right of appeal to the courts of law in the case of Gibraltar would be to the Supreme Court of Gibraltar. In the case of a seconded Officer it would be to the courts in the United Kingdom.

Mr Speaker, the Bill seeks to introduce the following other changes:-

Inclusion of Gibraltar Regiment personnel into the new UK Courts Martial system, including the investigation and summary dealing under the Army Regulations which now conforms to the European Courts of Human Rights ruling. I think that is a great improvement for the locally-enlisted men, that whereas the UK Army Regulations have for a number of years now been made Human Rights Convention-friendly, the local Regulations have not been and the result of this is that in making the UK Human Rights Convention friendly, disciplinary regulations apply to all Gibraltar Regiment personnel, they have now had extended to them in a sense the rigours of absolute Military discipline and procedure is now for the first time in Gibraltar made subject to the Human Rights Convention.

Mr Speaker, the other change is that it allows the application of the Reserve Forces Act of 1996 to Gibraltar thereby providing a much clearer picture of soldiers' rights and, indeed, of the Governor's rights to call Reserves out, to use layman's

parlance, in times of crisis. That is the whole area that used to be murky and which is now clearly established. The inclusion of all the relevant regulations, manuals and warrants appertaining to the Army in the United Kingdom is now achieved in the case of the Gibraltar Regiment by this Bill. This will be formally actioned shortly after the Ordinance is passed through this House by the issue of what is called a Command of Letter from His Excellency as Commander in Chief specifying exactly those publications which will apply.

The Bill gives greater protection for serving Officers and Soldiers in that their terms of service are clearly laid down in the schedules of the Bill. Whereas Terms of Condition, Terms of Bounty, Length of Commissions, used to be a matter of discretion, these things are now established in the Ordinance.

Finally, the effect of the Bill is a modern constitution for the Gibraltar Regiment which brings it as close as is possible to the mainstream British Army as has been possible.

Mr Speaker, the hon Members will be pleased if not relieved to learn that the Bill has the support of the Ministry of Defence and indeed also has the support of the Officers, the Honorary Colonel and what we call colonially, the Council of Colonels, I think its more formal name is the Regimental Council. Basically, this Bill has been negotiated on behalf of the Gibraltar Regiment by the Regimental Council which hon Members will know comprises all the retired Colonels in Council and they have recommended this Bill to the Government as being something which the Gibraltar Regiment has been seeking to achieve for many, many years.

I commend the Bill to the House.

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

HON J J BOSSANO:

Mr Speaker, we welcome and support the Bill for the new Gibraltar Regiment Ordinance. As has been said this in fact has been in the pipeline for an incredible number of years with the problem really being at the London end, getting people there to do the changes that were needed there so that action in

Gibraltar in support of those changes could take place and there was nothing that we could do here in anticipation of London moving on this issue. Obviously, the most sensitive part of the Ordinance and the one that puts de facto the Gibraltar Regiment in an inferior position compared to other Units was the fact that a seconded Officer from the United Kingdom could not be made to answer for a disciplinary offence to the superior Officer in Gibraltar as if somehow there was an ethnic difference which made him superior by definition and that therefore he could only be tried by his own. Although the instances when this happened were insignificant because in fact the numbers of seconded Officers are very few, nevertheless it was a principle that people felt undermined the discipline for the rest of the Regiment and was in some way offensive and a relic of the past in this areas which reflected the kind of distinction that used to be wrong in many other areas in our society and which have been gradually eliminated and that it was about time that this was put right as well. This is correcting an anomaly that was long overdue and I think it is worth recording, of course, since we are debating this in the House, that as one might expect Sir Robert Peliza, when he takes on a cause shows an energy in pursuing it that is incessant, has been pushing this one and lobbying on this one with everybody that came to Gibraltar and with everybody that he met in the United Kingdom and therefore it is I think the right moment that at the time when the Regiment has been given its new Colours and it is a special occasion, at the same time this is being put right and is coming to fruition on the same day. It is very good news for the Regiment, very good news for Gibraltar and, of course, it has the support of the whole House as it should be and as it would have done if it had come earlier to the House.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

Mr Speaker, I think this is one Bill that we ought to try and finish today, given that it is completely uncontroversial and I do not think that any points will arise in the Committee so that when the Gibraltar Regiment marches down on Saturday and has

its dinner tonight they will be able also to celebrate the fact that the House has unanimously passed this Bill rather than it being in the air. So on this occasion I would like the House's consent that the Committee Stage be taken later today.

HON J J BOSSANO:

May I suggest that since it looks as if we are going to be getting short of time the Chief Minister could always suspend Standing Orders so that we take the Committee Stage and then go back to the Second Reading of the Bills.

HON CHIEF MINISTER:

Yes, Mr Speaker, I shall have to do that.

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the Committee Stage and Third Reading of the Bill.

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 Bill clause by clause:

The Gibraltar Regiment Bill 1998.

Clauses 1 to 24, Schedules 1 to 4 and the Long Title were agreed to and stood part of the Bill.

THIRD READING

HON ATTORNEY-GENERAL:

I have the honour to report that the Gibraltar Regiment 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.

The Bill was read a third time and passed.

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 various Bills.

Question put. Agreed to.

BILLS

FIRST AND SECOND READINGS

THE COMPANIES ORDINANCE (AMENDMENT) ORDINANCE 1998

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to amend the Companies Ordinance in order to transpose into law Council Directive No. 89/667/EEC on single member private limited-liability companies; and to amend the Companies Ordinance (Amendment) Ordinance 1997 be read a first time.

Question put. Agreed to.

SECOND READING

HON P C MONTEGRIFFO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill implements Council Directive 89/667 on single member private limited-liability companies. The directive requires member states to provide for the formation of a company having one member and to permit a company to be a single member company subject to certain safeguards. In relation to Gibraltar it applies to private companies limited by shares or by guarantee. As we know the Companies Ordinance already makes provision for single member companies and this Bill therefore only transposes those elements of the directive not already provided for in our Companies legislation. The principal changes to the Ordinance are as follows:

1. Section 26 is amended to include both the companies by shares and by guarantee;

2. a new section 92A is inserted imposing reporting obligations in cases where there is a change in the number of members;

3. a new section 107A is inserted providing that the quorum in respect of single member companies shall be one;

4. new sections 112A and 141A are inserted, these deal with ancillary matters such as the recording of decisions and contracts with sole members directors;

5. the Bill makes minor amendments to the Companies Ordinance (Amendment) Ordinance 1997, in order to enable that Ordinance to come into force.

I commend the Bill to the House.

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

HON A ISOLA:

Mr Speaker, as the Minister has already said, indeed there is already provision within our Companies Ordinance for single member companies. I think there was a reduction from less than two to less than one and as the Minister correctly states the safeguards which are being introduced now in pursuance of the directive from 1989 have in practice been followed and the single member companies will have resolutions, board meetings, they service the minutes on themselves and they service the notices on themselves. In accordance with the policy that we have stated over a series of meetings of the House, because the legislation derives from an EU directive relating directly to financial services, we will not be supporting the Bill. We believe, as we have said before, that the legislation that is coming through on EU directives should not be transposed until such time as our position has been clarified. I have made this point before and I know that the Minister does not like it but that is our position and it remains our position.

HON CHIEF MINISTER:

When the hon Member says, "Until our position has been clarified", can he specify our position in relation to what?

HON A ISOLA:

Our position in relation to financial services, Mr Speaker, The position is that we continue to rush through directives. This one obviously has not been rushed through because it is 1989 but we continue to transpose directives which put requirements and restrictions in the hope of being able to do certain things which up to now unfortunately we have not really been able to do. That is the essence of the policy of the Opposition in saying that until such time as our position is clarified in respect of financial services we should not be transposing any further directives.

HON CHIEF MINISTER:

Mr Speaker, I know the Opposition Members take that position, but do they not see the contradictions in it? When they were in Government, they used to transpose financial services directives in order to obtain passporting and they were very cynical about whether the UK Government would ever deliver the passporting rights. They did not then take the view that because the whole situation was uncertain they were not going to proceed with the legislation. They proceeded with the legislation in the hope, which they never saw realised, that the UK would give passporting. The only thing that has changed between then and now is that since then we have actually been able to obtain passporting rights from the United Kingdom in insurance products and now that we have achieved what they used to transpose legislation in order to try and get, now they recommend to us that we should stop transposing legislation. This is not a Bill that relies on anybody agreeing to anything, this is to create law in Gibraltar and it is not a question of passporting and it is not a question of reciprocity or recognition of rights. But still the position is, that having secured what I thought everybody in Gibraltar was trying to secure and which indeed they were working hard towards, not by witholding transposition of legislation but indeed by transposing directives, having achieved it in insurance, now that we seek to achieve the same in respect of banking and in respect of investment services, the hon Members say, "No, no, no, do not do as we did, what we want you to do now, unlike what we did, is to create a situation of crisis by

witholding transposition of directives". I think the Opposition Members position apart from being indefensible in logic, I consider it to be wrong and indeed irresponsible but I have to tell the hon Members that insofar as passporting rights are concerned, in insurance which are the ones we have been able to achieve so far, we are shortly going to have our audit in respect of banking, and thereafter we will have our audit in investment services. There is no doubt, let me assure Opposition Members, in the minds of any regulator, of any member state of the European Commission still less the Commission itself, as to the competence of the Financial Services Commission to regulate and licence companies to operate on a pan-European basis. There is no doubt. No one is questioning it. Indeed, I can tell Opposition Members that as we speak Gibraltar licensed insurance companies are writing business in several European Union countries on the basis of a Gibraltar licence. What is being questioned now, which is something new but which does not prejudice the Financial Services Commissioner's ability to licence and regulate on a pan-European basis, is the ability of the Financial Services Commissioner to notify. What the other countries are saying is, "All right, we accept that the Commission is a competent authority to regulate and licence." But when it comes to notifying, regulator to regulator of something, we all think, well four or five, others are sitting on the fence, have said that they would like the notification to come via some UK authority. If the hon Member thinks that there is any doubt in our position in relation to Gibraltar licensed institutions' right to passport into the whole of the European Single Market, let me tell him that I am not aware, the Minister for Trade and Industry may confirm this when he rises, but I am not aware of anybody casting any doubt whatsoever on that position. I hope the hon Member has followed the distinction that I have made in relation to the notification as opposed to the licensing.

HON J J BOSSANO:

Mr Speaker, the position as far as we can tell is no different today from what it was before and that is that the challenge to Gibraltar's position in the European Union does not come from the competence of the Financial Services Commission but from the question of the legitimacy of the status of

Gibraltar within the UK and that position is promoted by Spain and by no one else. We have seen that reflected in areas other than financial services, but certainly in financial services, I can tell the Chief Minister that this is on the record in the meeting of Chairman of Central Banks going back as far as 1992 when the United Kingdom was arguing that in order to be able to get recognition for Gibraltar in the sense that Gibraltar should be treated as the equivalent of a separate member state, because that is what we are talking about, licences in Gibraltar would be different from licences in the United Kingdom but as good as. Spain made clear that their opposition was not based on doubts about the efficiency of the system here but was on instructions from the Ministry of Foreign Affairs because they undermined the Spanish claim to sovereignty. They put that down on record. We have here an example where in this directive for example where it lists who it applies to it says, "In the United Kingdom private companies limited by shares or by guarantee". We interpret that in accordance with the interpretation that the UK says we can put on it as being, "the United Kingdom in this case includes Gibraltar". There are other company-related directives where it does not just say, "In the United Kingdom or private companies limited by shares or guarantee" but it goes on to say "under the Companies Act 1985". That is an area where we cannot say it includes Gibraltar. We consider that there is a political issue here in that the position of Her Majesty's Government has been that at different points in time they said the recognition would happen when certain things were done and then when those things were done it did not happen and they required more things to be done. I can tell the Chief Minister that in 1992, in case he does not know it, he ought to know it, it is an argument that has been discussed in public on many, many occasions, in 1992 they promised in writing to Lord Bethell that the United Kingdom regulations transposing the Second Banking Coordination directive would make provision for Gibraltar banking licences to be recognised. At the eleventh hour they argued that there was not sufficient digress in section 2(2) of the 1972 European Communities Act to be able to do it and that a primary Act of Parliament which would have been presumably the Banking Act of Gibraltar, would have to be promoted, I do not know whether the position of the British Government has now changed or continues to be the

same. We have seen nothing in public to suggest the opposite and therefore given that the decision that we took as a matter of party policy arose at the time that the Monti proposals on tax harmonisation and the doubts were being raised about whether any progress was being made in recognising the status of Gibraltar and since then we have had further evidence of the success of Spain in isolating Gibraltar, we feel perfectly entitled to take a policy decision at any point in time in the circumstances. We are not telling the Chief Minister what he must do or he must not do, but I do not think he has got any right to tell us what we must do.

HON CHIEF MINISTER:

Mr Speaker, I am not telling the hon Member what he must do, far be it for me. I think the more of this sort of thing he does the better because what he is signalling to Gibraltar and indeed to the Financial Services Centre is that within a month of being returned to office, in the unlikely event that that should occur, he will plunge Gibraltar and the Financial Services Centre into chaos and he will undo all the progress which has been made before that and frankly it suits us admirably that the Leader of the Opposition should spell out his political position crystal clear. But I have to tell the hon Member this, he may have some doubt in his mind, I do not know whether he is still harbouring in his mind ambitions about being the thirteenth, now it would not be the thirteenth, the sixteenth member state, but no one has doubted in my earshot the status of Gibraltar within the European Union. I do not know how the hon Member can say that there is doubt about the status of Gibraltar in the European Union and if the hon Member justifies his stance on the basis of the fact that the United Kingdom sometimes says that we are part of the UK and sometimes says that we do not, the United Kingdom appears to have in the point of competent authority and things like that, an uncertain position. This has not arisen since the 16th May 1996. The United Kingdom was including or excluding specific references to Gibraltar, certainly for as far as I have been in the House and that goes back to 1992 and the hon Member did not then say, "Well, because the United Kingdom cannot decide this or cannot decide that I am not going to transpose directives". If the Leader of the Opposition thinks

that the Government are going to be in the least bit attracted by what I consider to be a reckless, imprudent and irresponsible stewardship of the affairs of Gibraltar by refusing to transpose directives, he must know what the consequences of that would be. In fact, he suffered the consequences of it and he may think that by adopting this position he may lure the Government into adopting that stance. He is going to have to keep the stance right up to voting day at the next General Election because there is no prospect of the Government assuming the stance that he appears to be recommending and then of course I do not know why he limits it to Financial Services because if he says, "I am not voting in favour of the transposition of any Financial Services directive because Gibraltar's status within the European Union is unclear..." to him, it may be unclear to him, it is not unclear to anybody else but if it is unclear to him the rational consistent thing from him to do is not to limit his opposition to Financial Services directives but indeed to vote against all directives whether they relate to Financial Services, Fresh Water, Health and Safety, or whatever else because Gibraltar's status, if it is unclear to him is no less clear in any other situation. The Opposition Members have taken a position and we take note of it and I have to tell the hon Member that it is a great source of satisfaction to the Government to be in a position to take a different position to theirs because if the hon Members were in Government today and were to implement the policy that they are now recommending from the Opposition benches, it would be, I have no doubt, an unmitigated disaster for Gibraltar which would bring consequences in its wake which the hon Member would then be powerless to rescue Gibraltar from. Of course, a very different point is the sense of anger and irritation that Gibraltar has on the question that notwithstanding that we comply with our EU obligations others, notably Spain, seek to deny the benefits and the enjoyment of the rights that go hand in hand with those obligations. The Government will take and is taking on various issues, steps to challenge that position but if the hon Member thinks that the best way to challenge that position is to put Gibraltar in a position of total breach of its EU obligations, of outright rebelliousness in refusing to transpose EU obligations, I have to tell the hon Member that I take a singularly different view as to how the

interests of Gibraltar can best be served in these difficult circumstances.

HON J J BOSSANO:

Mr Speaker, I certainly did not need to give way to the Chief Minister to know that he takes a singularly different view and he did not need to say it at such length and in such a picturesque language. The fact that he may consider our policies to be confrontational is a reflection of the fact that we consider his policies to be wrong and it is all a question of perspective and distance. Since he is gutless he considers that if you say "boo" to the Foreign Office, you are declaring a rebellion, but we know that that is the difference and we know it not because we are now in Opposition, we knew it when we were in Government because when they were in Opposition, they were as frightened of upsetting the Foreign Office, in Opposition, as they are now. If they were frightened in Opposition, heaven knows how much more frightened they must be now when they are in Government when it is quite obvious that the thing that pleases him most about the policy is that he thinks it will help him to get re-elected, which is of course the only thing that matters to him. If he thought tomorrow that being bolshie would get him re-elected, he would become ultra bolshie and outdo me in anything I have ever said. We are not suggesting to him that he should adopt our policies. I agree with him in one thing he said - we do not want to be like him and we do not want him to be like us. We want the people of Gibraltar to be quite clear that they have got a choice between two different philosophies and that there is nothing in common between the two sides of this House and that there was nothing in common when they were sitting here and we were sitting there and let it be like that. The fact that we stand up and we explain why we are voting the way we are voting is a matter that is sensible in the context of putting on in the record of the House the way that the vote is going to be taken. Of course, if he wants to have a debate about our respective political philosophy on each Finance Bill and if he is now recommending that we should do the same for every EU directive so that we can have the same debate on each EU directive as well, I am quite prepared to go down that road. I suppose the time will come when we will exhaust Mr

Speaker's patience and we will be told to cut it short.

Certainly, nothing that the Chief Minister has said convinces us that what we are doing is going to bring an end to this glorious upsurge since the 16th May that we have seen in the Finance Centre for which he is taking the credit because as far as I can tell from the statistics that are being produced, the activity in the Finance Centre today is the same as it was in May 1996. The growth that happened during the chaotic eight previous years was astronomical and the increase in employment, in bank deposits and in activity in the Financial Services industry in 1988 and in 1996 should never have happened according to his theory of us taking Gibraltar to the brink of disaster. The answer is that the directives were being done as and when we thought they should be done but not only are they spending money on drafting legislation over and above what was being spent before, they are even paying for what the UK used to pay. The Government have even abdicated the defensible position of saying to the UK, "Look, we are a small place and we can only devote so much time and so much money and so much manpower to bringing in EU legislation, and if you want it done quicker....." and here we have today on the Order Paper, Mr Speaker, a directive which is now going to be implemented from 1968. Was that that Sir Joshua Hassan was bolshie since we joined the Community in 1973 and that is why we are waiting until 1998 to implement something from 1968? Thirty years after? No, it is just that the Governments of Gibraltar have always told the United Kingdom, "Look, we have got our own priorities and our own resources" and the UK was willing to put in money which is no longer being put and when we are getting the legislation and we ask questions, what we get from Government Ministers is, "Look, we trust the expertise of the professionals who are the drafters and if it does not make sense we will have to go back and take advice", because, after all the Chief Minister if we ask him about the law he says, "Well, I am not a Law Draftsman" and if we ask him about the tax he says, "Well, I am not a tax collector" and if you ask him a question in supplementary he says, "Well, the people who write the supplementaries did not foresee where the supplementary would come from", and everything he needs notice of. We give him all the notice he wants and we put all the questions in the simplest

and the best way so that he can give us all the information which I know makes him happy because he believes in providing information. Half the time we raise these issues and we make these contributions in the House and we ask all these questions in order to satisfy the voracious appetite of the Chief Minister for providing information. We do not want him to go hungry from the House, that is why we raise these points.

HON P C MONTEGRIFFO:

Mr Speaker, let me first say that what the Chief Minister has informed the House with regard to passporting is the absolutely correct position. There is no member state that challenged the competence of the FSC. The issue at stake is purely the question of notification which has been explained. Mr Speaker, the Opposition teases us for being soft on the Foreign Office and for giving in in circumstances where they would have not. I do not think I have lived in a different Gibraltar to the Gibraltar that they lived in or that others have lived in but certainly I can, just from memory, think of a whole list of directives and measures forced upon the previous Government which they seemed unable to resist. Frankly, for example, the Financial Services Commission Ordinance, which was introduced by the last administration after an almighty hoo-hah ended up with a situation, for example, where the Gibraltar Commission has a majority of UK members, a position which has been untenable and unacceptable to this Government and that was thrust on the Government of the day and did we have demonstrations on the streets? Did we have press releases lambasting the then Chancellor of the Exchequer at the Foreign Office? No, they accepted it and that was it and that is as colonial as it could come. There is no other Dependent Territory, in Cayman, no other Crown Territory, in Jersey or Guernsey, with a situation of their Commission run by a majority of people from outside Gibraltar and that is something they introduced. The Leader of the Opposition also talks about this distinction between those directives that talk about companies limited by shares or guarantees on the one hand, in the UK, and companies incorporated under the Companies Acts in the UK as if to suggest that if legislation were to say the latter in directives, that is all the more reason why Gibraltar should have transposed. Mr Speaker, unless my memory is

failing me, that is precisely the wording of the subsidiary directive which the previous administration brought in with a great flurry.

The subsidiary directive which also ranks as another major failure of the last administration's initiatives in this area because not a single holding company has ever given rise to any business as far as I am aware. That legislation imposed the transposition of a directive which says, "This Directive applies to companies in the UK incorporated under the Companies Act", so which way are we to have it. Is it that when the argument simply satisfies him, is convenient to the Opposition, he goes one way and where it is not he goes the other, there simply is no coherence and no logic to their view. Mr Speaker, the reality is that the difference between what might have been the case in 1968 and now with regard to some directives and indeed with one directive which goes back to 1968, is that there were no infraction proceedings threatened at the time but as a result of the significant delay that we have suffered, primarily through controversy over a number of Bills, but for many other reasons, law drafting capability et cetera there are now infraction proceedings. There are now 169 letters, there are now recent opinions in respect of a whole list of directives, many of which are before this House today and, Mr Speaker, yes the Opposition can take the view that Custer's last stand should be fought today. They tried to play fair for eight years but they have now come to the sad conclusion that playing by the rules does not work and that therefore now is the time to draw the line in the sand and to say enough is enough, We do not agree with that approach. We believe that that approach is, what the Chief Minister said, confrontational, irresponsible, but frankly it is completely untenable. I cannot seriously believe that unless what the Leader of the Opposition wants is to explode the Gibraltar issue in one almighty mega explosion, I cannot believe that the Opposition Members are recommending to Gibraltar, as a tenable course of action, that what we should now do is say no to transposition of directives and of course if they were logical they should say to all directives rather than just to these and effectively declare war on Brussels and on London and on everybody else. That is simply not a tenable position Mr Speaker. If politics is to be played, it should not be in the area of Financial Services. The bankers and the

insurers and the accountants and the lawyers that are listening to this debate or who may be reading the report of it, may all feel at certain times the frustration that we have to make our way in Europe with particular obstacles but they would be aghast at the suggestion that the formal policy of the Opposition party that would become their policy if they were elected into Government is that we should simply say that we do not comply with the legal obligations of Gibraltar because if that happened, that would create a degree of uncertainty and this community's financial services could not sustain.

Mr Speaker, the Leader of the Opposition also talked about and mocked the glorious upsurge in Financial Services business since the 16th May 1996. Again, one could only go on one's own experience, but I have absolutely no doubt, and I have made that point in the House before, that the industry was on the point of collapse on the 15th May 1996 and Mr Bossano may chuckle and think that it is purely mischievous politics on my part but I think he should know me better. I and others that had experience in promoting Gibraltar up to the 15th May 1996 know that for reasons to do with the whole way that Gibraltar was being governed, let alone the Financial Services, Gibraltar had become unmarketable, Mr Speaker. That is the reality that we faced on the 16th May 1996. That we have not attracted as much business as we would have liked, we would share that view but we have been recovering from a very difficult position and we are self-congratulatory in saying that we have done a very good job in redressing the balance. We have and I can only put it down to I hope genuine ignorance on the part of some of the Opposition Members if they do not agree with my view, but I cannot believe the hon Opposition spokesman on Trade and Industry can possibly disagree because he must have also been aware of the calamitous situation in which we found ourselves prior to the last elections. There has been a glorious upsurge in the way the international community looks at Gibraltar, the way the international press reports on Gibraltar, the attitude of the UK Departments when it comes to accommodating Gibraltar's requests, although I can tell the hon Members that there are still officials in the UK bruised sufficiently by the experience of 1988 to 1996 to take a lot of persuasion that things have changed. We are making headway and it will

take a little longer before there is a glorious upsurge in substantial new business.

Mr Speaker, I do not intend to have a debate on the whole future of Europe and Gibraltar's position in it every time we have a Financial Services Bill. I simply seek to place on record the total inconsistency opposition compared to their own record in eight years. The fact that they choose to highlight the Finance Centre but nothing else and the fact that Gibraltar has no tenable cause other than to comply with its obligations and then, yes, rightly seek that our rights that derive from such transposition should be respected and achieved for the whole industry.

HON A ISOLA:

Mr Speaker, I was interjecting at a time when things were being said relating to the drawing of a line in the sand and putting the barricades up and then my hon and learned Friend went on to tell us about the lawyers, accountants and company managers. I do not know if the Minister has forgotten but the Bar Council, of all the lawyers in Gibraltar, in 1998 this year had passed a resolution calling on the Government, they must have a copy of it, saying, "No more directives until our position has been clarified" and that is exactly what we are saying, and the Government say, "Should we not implement laws?" The lawyers themselves through the Bar Council are saying, "Do not". Many other associations are saying exactly the same thing and the simple point I was saying is clarify the position, do not give us more regulations, more restrictions and more means through which our own professionals in Gibraltar cannot practice or continue to practice until such time as the position is clarified. The Bar Council resolution is very clear and very simple. There is a genuine concern in the industry and the Government should take heed of that concern and not just brush it aside as they seem to do in every House that we sit.

HON P C MONTEGRIFFO:

But, Mr Speaker, I think that the Opposition Members just do not understand the nature, frankly, of either directives or politics. Of course there may be concern, Mr Speaker. There is concern in Luxembourg, for example, that if the savings

directive on bank deposits that threatens to impose a withholding tax on bank deposits, there is concern in Luxembourg that if that is passed it will have an effect on the Luxembourg banking sector but there is not a position in the Luxembourg Government that because people are threatened by it they are simply not going to transpose a directive. When a directive is passed, a directive is passed and the obligation of Governments within the Community is to implement it and the whole Financial Services industry is in the process of reform, but is that a reason to say we are not going to implement it? Does the hon Member think that we have the choice in Gibraltar, a choice that Luxembourg has not got to say if a directive says do Y, we are not going to do it? Mr Speaker, that is simply not a tenable position. But as far as the Bar is concerned, his information may be different. My information is that the lawyers have reconsidered their position and that the resolution of the Bar is not the position of the Bar on this matter. It might have been at the time but it is not the position of the Bar then and it is surprising that this debate is being had in context of this particular Bill, let me add. This particular Bill is one that if anything is helpful to the industry. I would understand if this debate was being held in the context of the Fourth and Seventh Company Law Directives where there are issues that are challenging for the company management industry. But in this case what this does is actually provide single member companies which we, in fact they, I think are keen to actually introduce. Mr Speaker, therefore the actual substantive part of the Bill does nothing more than to actually substantiate, to add to, provisions that are entirely helpful to the industry.

Question put. The House voted.

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

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

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

THE AUDITORS APPROVAL AND REGISTRATION ORDINANCE 1998

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to provide for the approval and registration of auditors, for the establishment of the Auditors Registration Board, for the keeping of the Register of Auditors, for transposing into the law of Gibraltar Council Directive 84/253/EEC on the approval of persons responsible for carrying out the statutory audits of accounting documents and for matters connected therewith and ancillary thereto be read a first time.

Question put. Agreed to.

SECOND READING

HON P C MONTEGRIFFO:

I have the honour to move that the Bill be now read a second time. Sir, this Ordinance will implement in Gibraltar the Eighth Company Law directive. It also replaces the existing Auditors Registration Ordinance. The directive provides for a system of a pool of statutory auditors and distinguishes between auditors who are natural persons and auditors which are firms. It also provides for auditors who are qualified elsewhere in the EEA to be registered if they can show satisfactory knowledge of local

conditions. Clause 3 of the Bill establishes the Auditors Registration Board. The Financial Services Commissioner is the Chairman of the Board and he will appoint at least two and not more than four other members after consulting the Gibraltar Society of Chartered and Certified Accountancy bodies. The Board may establish committees and in particular it is envisaged that such a committee will investigate the local knowledge of an applicant from some other part of the EEA. The Board and any committee will have immunity for their actions. Clause 5 sets out the form the Register will take. Part I will contain the natural persons entitled to carry out a statutory audit, that is an audit which must be done by an approved auditor. Part II will contain firms entitled to carry out such audits and Part III will contain other auditors.

Mr Speaker, care has been taken with regard to those auditors that, whilst not being entitled to registration under Part I and II, should be able to go on to continue to work as at present by virtue of registration under Part III. There is an amendment to the Ordinance to correct a typographical error in the Schedule to make clear that that is the position that will pertain.

Clause 6 sets out the qualifications required for entering the Register. Essentially, a natural person must be qualified in the UK or with an equivalent qualification in another EEA state. In the latter case that person must show that he has adequate local knowledge. A firm wishing to be registered under Part II must show that a majority of its shareholders and directors are registered under Part I.

Clause 7 provides that audits must be carried out with professional integrity and completely independent.

Clauses 8 to 12 deal with removal from the Register, appeals and offences, and Clauses 13 to 16 provide miscellaneous and supplementary provisions.

Mr Speaker, the Bill does not make any real changes to the way in which audits are carried out and no additional burdens are placed on Gibraltar companies or firms. However, it does allow for compliance with the Eighth Company Law Directive.

I commend the Bill to the House.

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

HON A ISOLA:

Mr Speaker, it will come as no surprise to the Government Members that we will not be supporting this Bill for a number of reasons, primarily the ones that we have been through in the last Bill before the House. In this case particularly more so as the last Bill was merely bringing in guidelines or rules as to how those single member companies should be run. This Bill, to an extent, is soft on understanding the difficulties that practitioners in Gibraltar have who have not been through the professional examinations and being members of the professional bodies in the United Kingdom which entitle what is not registration under Part I of the Bill. The Bill makes reference to the Auditors Registration Ordinance which I am sure the Minister knows was repealed in 1992 and refers to in certain other parts to the same Ordinance which as hon Members know was repealed in 1992. It seeks also to repeal it again, I am not sure whether there is a technical reason for that. I notice from the amendments that the Minister will be moving at the Committee Stage that indeed Part III of the Register in this Bill will be included in Schedule 2 so that under section 124(1A) of the Companies Ordinance which means basically that the company has to have an auditor and that will apply to Parts I, II and III.

The difficulty particularly in this Bill that we find is that we have this business of a statutory audit. The statutory audit under section 5 of the Bill restricts the persons entitled to carry out that business to Part I of the Register which are only those people that are professionally qualified and members of the professional body in the United Kingdom and can consequently provide or satisfy the provisions of section 6 and therefore do statutory audits. The people however, that are in Part III, do not satisfy the provisions and it is in that area specifically, apart from bringing in a whole team of restrictions and regulations which apply across the board to all parts of the practice, Part III of the Register which contains those who have many, many years of experience in this business are barred from

carrying out these audits. The fear comes from the fact that statutory audits are those that are stated by different EU directives to be statutory audits. One may have, for example, banks or financial services companies, investment services, insurance companies, that require to have statutory audits and in respect of those companies only a Part I registered practitioner or Part II firm will be able to carry out that business. The concern stems from the ability of a whole ream of EU directives which may expand the ambit of statutory audits to the extent that any company within the UK requires to have a statutory audit and the way things are moving and the speed with which things are moving that is a real possibility. It is clear that the directive states that the statutory audit can only be done by a person with the qualifications and the items in articles 3 to 19 of the directive but in Gibraltar specifically there is a finer problem which is that the people in Part III are not being added to. These people stopped in 1983 or 1992 when the Ordinance was passed, nobody else was allowed to be added to that list, so the people that are there now cannot be increased. It is a peculiar problem and one that will not be increased in terms of numbers of people. I would have thought that in respect of those members in Part III there should be a provision or a case made, I am not sure if it has been, maybe the Minister in his reply will confirm whether there has or has not been, for a specific change to be made in respect of those practitioners that will come under Part III of the Register. These are individuals that have been doing audits and are registered auditors in respect of any companies, although they do not, I understand that they probably have around 50 per cent of what I would call normal trade, retailers, wholesalers, not extending to banks and financial institutions. I think the case certainly should be made because at the end of the day when these individuals have been carrying out this work for 10, 15, 20 years, what difference is there in the ability of that individual to do the audit tomorrow, that he was not able to do yesterday simply by the introduction of law that says they can no longer do it. There is nothing about ability or competence, it is clear they have that. It is clear they are fit and proper people. It is clear they have the qualification by experience and therefore in respect of them specifically which this Bill restricts today but could put up a business tomorrow should take more

care. We certainly hope that if the case has not been put it should be put to redefine the statutory audit which will include them and therefore although excluding them from banks and other financial services institutions or investment services companies, they should be protected so that in the future if there is a statutory audit required they are within the ambit of the statutory audit. I have mentioned this to the Minister outside and again I am not aware of what representations have been made but I would certainly hope that there have been. Mr Speaker, again this may be raised at Committee Stage and I have also mentioned it to the Minister in the ante room, Part A reads "Part I of the Register will consist of natural persons entitled to carry out the following activities..." It lists 1, 2 and 3. Those are statutory audits and other audits of verification. Part II says they are firms who are entitled to carry out activities mentioned in paragraph A but in respect of Part III it merely says who they are and it does not say what businesses they are entitled to transact. I understand the consequential amendment in Schedule 2 now includes them but if it is a consequential amendment it must be a consequential amendment of something, I cannot see anything on the Bill that enables them or entitles them by definition as there is with Part I or Part II which also relates to Part III. I think if it can be referred to in Part III that they are entitled to do any other business other than that stated in Part A then that would certainly clarify that part.

HON P C MONTEGRIFFO:

Mr Speaker, I am grateful to the hon Member for his comments and let me say straightaway that I share entirely the concern to ensure that the grandfather auditors should be properly protected and dealt with. Indeed, the Government is satisfied that the Bill does that. We have had representations from the auditors. There have been communications with them both directly with myself and also with the draftsman of the legislation and we are satisfied that the Bill is entirely sympathetic to the position of the grandfather auditors, albeit within the requirements necessary to implement the directive. The hon Member draws attention to the definition of statutory audit and suggests that we should exclude the possibility of any other statutory audit definition being introduced in the

future because this would further curtail the areas of work that Part III auditors could do. Mr Speaker, we would not accept that that is a legitimate form of law making. As we sit here today the statutory audit does not include most of the work which the Government understands it is important to protect for the purposes of these professionals, but if it were to be the case at some stage in the future that there is a directive that does cover that position, then obviously the fact that we have legislation that defines today what statutory terms are, does not exempt Gibraltar from the position of having to deal with what would then be a definition of that stage. Government would rightly be concerned if the definition of statutory audit were to extend to a way that impacted upon the livelihood of this category of auditors and we would certainly consider the position at that point and react accordingly at that stage, bearing in mind the best interests of Gibraltar. We cannot at this stage seek to anticipate such a move, it would be quite unorthodox to do so, Mr Speaker.

HON J J BOSSANO:

Can the Minister explain to me, the concept of statutory audit is not something that is in the directive, is it? It is something that the Government of Gibraltar has chosen to introduce to link the role of directive to the auditor?

HON P C MONTEGRIFFO:

No, Mr Speaker, the concept of statutory auditor is a concept that derives from the directives, so for example in the context of the insurance directives, where there is a need for an insurance company to be audited the directives will say that it has to be an auditor of a certain type and Community Instruments relating to different aspects of financial services may define for a statutory audit. The matter raised by the hon Member is the fear that if statutory audits continue to be sought in respect of further matters within directives, will this not de facto cut down on that reserve of what are currently non statutory audits which are reserved also for Part III auditors to be able to undertake. The Government recognise that possibility but we do not accept that either we cure it by saying now what statutory audits are, because if we were to say they are today, if a directives comes up tomorrow, we are

bound by that directive, but secondly, if there was to be a directive that had a very serious effect on Part III auditors, the Government would then be open to representations at that stage and the Government would have to consider the position at that moment. To give the House another example, under the Fourth and Seventh Company Law directives, which is an appropriate example, a statutory audit is required for normal companies but is not required for small companies so we could star gaze into the future but the position today is that the audit of a small company which of course the vast majority of Gibraltar companies are would not be subject to a statutory audit and therefore be an audit that Part I, Part II and the Part III auditor would be able to undertake. The final substantive point made by the hon Member is with regard to the wording of section 5(1) and the fact that 5(1)(a) actually says what Part I auditors can do but there is nothing explicitly contained in 5(1) that says what Part III auditors can do. Mr Speaker, the position is made very clear by virtue of paragraph 3 to Schedule 2. The amendment introduced there makes it clear that Part I, II and III auditors will be entitled to audit companies under the Companies Ordinance unless of course then those companies fall to be one in respect of which a statutory audit is subsequently required. So we have no doubt that the matter is properly drafted and that the position is adequately protected.

Question put. The House voted.

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

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

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

THE DISCLOSURE OF INTERESTS IN SHARES ORDINANCE 1998

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar Council Directive 88/627/EEC concerning the information to be published when a major holding in a listed company is acquired or disposed of be read a first time.

Question put. Agreed to.

SECOND READING

HON P C MONTEGRIFFO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the purpose of this Bill is to transpose into the law of Gibraltar Council Directive 88/627/EEC concerning the information to be published when a major holding in a listed company is acquired or disposed of. It accordingly only applies to public companies. The Bill requires that substantial interests in the voting share capital of companies whose shares are listed on the stock exchange situated or operating within an EU state shall be disclosed. It further makes provision to facilitate companies in investigating the ownership of their shares. Clause 3 lays down the obligation of disclosure, whilst Clause 4 sets out the interest to be disclosed. It should be noted that disclosure is only required when the percentage level of a person's interests moves to one of the disclosure thresholds specified in Clause 6. This makes the legislation more transparent and follows the thresholds provided for in the directive. Clause 7 deals with the particulars to be contained in notification. Certain categories of interests can be disregarded and clause 14 deals with those exemptions. For example, open-ended investment companies which are public companies

which are investment vehicles are exempted from this obligation. There is also a power to make regulations under clause 28 regarding fees to the registrar. The legislation requires the keeping of a register by each company which is subject to the legislation and by the Registrar of Companies itself. The Registrar of Companies is made the competent authority for the purposes of this directive. It is empowered under clause 27 to cooperate wherever necessary with the competent authorities designated by EEA states for the purpose of facilitating the performance and duties of competent authorities under the directive.

I commend the Bill to the House.

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

HON A ISOLA:

Mr Speaker, for the same reasons given earlier which I will not repeat again we will not be supporting this Bill.

Question put. The House voted.

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

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

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

THE INSIDER DEALING ORDINANCE 1998

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar Council Directive 89/592/EEC co-ordinating regulations on insider dealing and thereby to prohibit insider dealing in securities and to provide for investigations into alleged insider dealing and for assistance to overseas authorities for the purposes of that Directive be read a first time.

Question put. Agreed to.

SECOND READING

HON P C MONTEGRIFFO:

I have the honour to move that the Bill be now read a second time. This Bill also transposes another directive into Gibraltar law, namely directive 89/592/EEC and creates a specific offence of insider dealing. As we all know there have been many difficulties in the UK and indeed other countries of the EU with regard to trading in shares with inside knowledge. The international dimension of this problem is one of the reasons that gave rise to this directive so as to make a new European wider fence. The Finance Centre Council and other interested bodies have been consulted on this draft, as indeed on others, and agree that it would not adversely affect Gibraltar. Indeed, the legislation will enhance Gibraltar's reputation in financial services. The Bill carefully defines types of duties that are covered. The House will know that these are limited or quoted securities on the various exchanges contained in Schedule 4. The Regulations accordingly do not apply to any form of private company. Clause 3 defines an insider as somebody who has and knows he has inside information from an inside source in relation to dealings in securities. If the information is public it will not be treated as inside information. Clauses 4 and

5 provide definitions of dealings in securities and professional intermediaries. Part II, Clause 6 to 7 creates the actual offence of insider dealing and provides certain defences. It is the defence, for example, for an alleged insider to show that he would have done what he did even if he had not had the information in question. By Clause 8, Mr Speaker, the offence must be committed in Gibraltar.

Finally, Parts III and IV and Clauses 12 to 16 deal with investigations into possible offences. The competent authority appointed by the Minister for Trade and Industry would have wide powers to investigate possible offences and he would also be empowered to assist other EEA authorities in their investigations.

Mr Speaker, there will be a minor amendment to the wording of one of the Schedules which lists the stock exchanges in question, it is purely typographical and therefore I will reserve that for the Committee Stage.

I commend the Bill to the House.

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

HON A ISOLA:

Mr Speaker, once again as in the past, the Minister will not be surprised to hear that we will not be supporting this Bill. In respect of this Bill I would ask the Minister whether it deals solely with the requirements of the directive and the consequential amendments that follow from that or whether there is in fact any parts of this Bill which come other than it may be required from the directive. The Explanatory Memorandum suggests that indeed it is solely for the requirements but I would like that confirmation. There are a number of points in the Bill that I would raise at this stage. The question of the defences, seem a little curious unless my understanding is wrong in that it seems it is a defence to an offence under section 6(1)(a) if the individual was in Gibraltar at the time that he learns or receives the information and the market in respect of which he is dealing is one listed in Part I of Schedule 4, so if it is one of those three listed, wherever he gave the information it is not an offence. But, if the professional intermediary

was within Gibraltar at the time when he is alleged to have done anything by means of which his offence is alleged to have been committed then he does commit an offence. In other words, it seems that the individual gathers the information in Gibraltar in relation to the NASDAQ or the Amsterdam Stock Exchange and then goes home, he lives in Spain, he receives a call from a friend and he says, "Hey, here is a good tip for you, these are the shares I recommend because..." He is not actually committing an offence, it is a defence to the offence created under section 6(1)(a). I am not sure if that is intentional or whether there is something that needs to be included there. Also the same can be said of section 8(2) which deals with 6(1)(b) and (c) and I am not quite sure why in 8(1)(a)(i) it is restricted to Part I of Schedule 4 and does not indeed extend it to Part II. I assume there is a reason for that because it specifically deals with that but obviously Part II has every other stock exchange that exists within the EU. I notice it includes the NASDAQ so I do not quite understand why it is restricted to those three - the London Stock Exchange, the Liffe Administration and Management and the OMLX the London Securities and Derivatives Exchange Limited. If there is a reason I would be interested to know what the reason is because it seems to me that to give somebody a defence by simply walking across the border and carrying out what is in effect insider dealing seems to defeat the purpose of the Bill in so far as Gibraltar is concerned because of its locations and its size.

HON J J BOSSANO:

Mr Speaker, the competent authority for ensuring there is compliance with the Ordinance means any person appointed by the Minister for the purpose of the Ordinance. It goes on to say, "the persons so appointed shall be regarded as competent". Does that definition imply that it is entirely a matter for the judgement of the Minister whether a person is suitable to be the competent authority and that no specific qualifications are required? Is there in the directive a provision for notifying other people who is the competent authority in Gibraltar? My third question is, will there be a need for this person who becomes a competent authority to be permanently in post, that is to say, given that in Part III, section 12 it says, "If it appears to the competent authority that there are circumstances

suggesting that an offence may have been committed", we are not really talking about appointing somebody to investigate something because it is suspected to have happened, it suggests that the authority is all the time in office and if the authority comes to the conclusion that something requires investigation, as I read it. Could the Minister explain if that is in fact what he means?

HON P C MONTEGRIFFO:

Mr Speaker, may I deal firstly with the points raised by the Hon Mr Isola. The only provision that I can possibly suggest comes from outside the directive but I would have to revisit the directive in detail to be able to say that the objectives that fall outside the directive are the provisions of clause 20 of the Bill which basically make clear that the Financial Services Commission is given powers to effectively cancel licences and to disqualify people from operating in financial services if there is offences committed under this Ordinance. Obviously, there is a power under Section 20 when a person is convicted of an offence then the authority on the Financial Services Ordinance, namely the Commission, is able to disqualify the person from operating. That would seem to be the only possible provision that might be an extension or consequential to the directive and it would seem an entirely sensible position to have because it would simply allow the authority, the Commission, to say, "That person has been convicted of an offence under the Insider Dealing Ordinance and therefore licences held under the Financial Services Ordinance should be appropriately cancelled".

The second issue that the hon Member raised was the question of defence as drafted in Section 7 of the Bill. The Bill has been drafted in accordance with the directive and whilst it might give rise to a situation that potentially needs that indeed somebody can receive information in Gibraltar and then act on that information in another member state, it is only where the act of using information is committed that an offence is created. It is where the act has been created that gives rise to an offence. The simple act of receiving information is not the offence, it is the act of receiving information and subsequently acting on it. I think there is nothing objectionable in that wording.

Nothing that I would see as being necessary of any form of amendment or modification.

Dealing with the points raised by the Leader of the Opposition, the competent authority is one that the Minister will appoint and let it be clear that this is not a competent authority that will have a day-to-day workload most of the time. This is a competent authority that will have competence in the various areas outlined in the directive as and when the need to enforce its provisions arise. We do envisage that once appointed that person or entity will be the competent authority for the purpose of the Ordinance. We do not envisage the appointment of the competent authority for a period of time in relation to a particular issue arising from this Ordinance only to have that competent authority revoked and then have another appointment. There will be an appointment made in pursuance of this Ordinance in respect of the functions that the competent authority is required to undertake in relation to these duties. We would see that person or body remaining permanently in post subject to such revocation of the appointment as might be desirable in the normal course of events.

HON A ISOLA:

If I can just go back to the point of defence, it seems section 8(1)(a)(i) has nothing to do where the act takes place, it simply says that if one has done any act in Gibraltar forming part of the alleged dealing, I assume forming part is receiving or giving that information, one cannot give it unless one receives it obviously, the regulated market and the regulated market in which the dealing is alleged to have occurred is the London Stock Exchange, it is an offence, but not if it is the Amsterdam Stock Exchange, that is the difference I do not understand. Part I of Schedule 4 simply has the three listings, whereas Part II has all the Stock Exchanges, that is why I am saying I do not quite understand why it is just restricted to those three, surely it should be all of them.

HON P C MONTEGRIFFO:

Mr Speaker, I note the point that the hon Member is making, I can see why he might be confused by the matter. I will have it looked at and by the time we

come to Committee I shall give him a full explanation.

Question put. The House voted.

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

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

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

THE LISTING OF SECURITIES ORDINANCE 1998

HON P C MONTEGRIFFO:

I have the honour to move that the Bill for an Ordinance to transpose into the law of Gibraltar the provisions of Council Directive 79/279/EEC co-ordinating the conditions of the admission of securities to official stock exchange listing and Council Directive 80/390/EEC as amended on co-ordinating the requirements for the drawing up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock exchange listing be read a first time.

Question put. Agreed to.

SECOND READING

HON P C MONTEGRIFFO:

I have the honour to move that the Bill be now read a second time. This Bill transposes into Gibraltar law the requirements of Council Directive 79/729 co-ordinating the conditions for admission of securities to official stock exchanges listing and Council Directive 80/390/EEC on co-ordinating the requirements for drawing up, scrutiny and distribution of the listing particulars to be published for the admission of securities to the official stock exchange listing.

Although Gibraltar does not have its own stock exchange, a person issuing securities in Gibraltar must abide by the rules of the exchange on which they are to be listed. The Bill provides for that. Clause 3 ensures that the application is made to the competent authority which usually will be the stock exchange of the place where the securities are to be listed. In addition to any particular requirements of that exchange, clauses 4 and 5 provide for a general duty of disclosure in the listing particulars and any changes in them so that investors and their professional advisers can be properly informed about the securities to be listed. Clause 6 provides that a copy of the particulars must be sent to the Registrar of Companies. Failure to do so is a criminal offence. Under clause 7 an issuer who makes a false or misleading statement in the particulars is liable to pay compensation to anyone who suffers a loss as a result of relying on that statement. Clause 8 provides there is exemption from that liability, for instance if the issuer reasonably believed after making necessary enquiries that the statement was true. Finally, Mr Speaker, I will highlight that the person responsible for issuing the particulars is more closely defined in clause 8 whilst clause 10 deals with advertisements relating to listing applications. It also creates an offence if an issuer advertises without approval. I commend the Bill to the House.

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

HON A ISOLA:

Mr Speaker, I thank the Minister for that explanation. But these are the requirements that a company or security wishing to be listed will have to meet in the place where the stock exchange is sited. I cannot understand, if there is not going to be a stock exchange, what the purpose of this legislation is and whether an impact on a Gibraltar enterprise, finding itself being listed in a stock exchange elsewhere. Obviously, it would require to meet the obligations and standards and rules and regulations that are required by that stock exchange to provide, I assume, the same or similar information. Therefore, I am not certain whether the Government envisage that this Bill will be required or whether in fact will be used. Is there a situation where the Government envisage that it will be necessary other than obviously the time when the stock exchange will be set up in Gibraltar? I am not sure whether there is a scenario where that may be. I would also ask, Mr Speaker, the same question that I asked in the previous Bill and that is whether this Bill is simple transposition of EU law or whether in fact there is anything added? It seems to be simple transposition from what the Explanatory Memorandum reads.

The final question and comment I would make, Mr Speaker, before indicating our intentions to our voting or support of the Bill is to raise the question of the competent authority. In the previous Bill we have just had there is the competent authority being appointed by the Minister and here we have the competent authority being such authority as may be designated by the Government and I would just be asking as to whether there is any difference in that? There must be a difference, otherwise they would both be the same and I assume there is a reason for the difference. I would be interested to hear what the reason is. For the reasons that I have given in all the previous Bills we will not be supporting this Bill.

HON P C MONTEGRIFFO:

Mr Speaker, the impact of the Bill on Gibraltar must be viewed in conjunction with the next Bill that will be taken by the House which is the Bill that will deal with prospectus requirements in respect of companies seeking to have subscriptions from members

of the public. Essentially, under the Prospectus Bill, companies wishing to be listed or indeed to receive subscriptions from the public will be required to comply with certain listing rules and this Ordinance effectively defines what those listing rules will be. Of course, Gibraltar does not at present have a stock exchange which means that the only possible relevance of this Ordinance and the Prospectus Ordinance in terms of at least listing is concerned, is a listing on a foreign exchange, an exchange in Europe, outside Gibraltar. But the reference to the competent authority in this Bill is a reference for the day when Gibraltar does have a stock exchange. What it basically is saying is that at that stage if Gibraltar were to have a stock exchange a competent authority in Gibraltar would be such competent authority as the Government then designates. There is nothing to be read into the distinction between Government in this Bill and Minister in the previous Bill. The reference to competent authority in this Bill is toothless at this stage because it can only be the competent authority that will come into existence if and when there were to be a stock exchange in Gibraltar.

Question put. The House voted.

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

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

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

THE PROSPECTUSES ORDINANCE 1998

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar Council Directive 89/298/EEC on the co-ordination of requirements for the drawing up, scrutiny and distribution of the prospectus to be published when transferable securities are offered to the public be read a first time.

Question put. Agreed to.

SECOND READING

HON P C MONTEGRIFFO:

I have the honour to move that the Bill be now read a second time. This Bill transposes the requirements of Council Directive 89/298. The directive and the provisions apply only to transferable securities offered to the public and therefore do not cover private securities. Clause 3 provides that a prospectus must be published and that before publication a copy be delivered to the Minister and to the Registrar of Companies. It should be noted that where a company is listed on a stock exchange the prospectus must comply with the listing rules but the majority of this Ordinance will not apply to it. Clause 4 details who is responsible for a prospectus and clauses 5 and 6 define what is an offer of securities and in what circumstances it is made to the public. Clause 7 gives exemptions from the rules in clauses 5 and 6 so that, for example, an offer made just to members of a particular company or employees of a private company do not fall within the Ordinance. Clause 8 to 11 set out what the prospectus must contain - full details in Schedule 1. These provide for a general duty of disclosure in the prospectus so that it must contain details sufficient to give a prospective purchaser a proper overview of the company. Any changes must be the subject of an additional prospectus. The Minister may authorise

the omission of information from a prospectus in certain circumstances. Clause 12 provides that no advertisements about any offer may be made unless it gives details of the prospectus. Clause 13 and 14 provides that an issuer who gives false or misleading details in a prospectus is liable to pay damages to a person who suffered loss in relying on that information and certain defences are provided. If the issuer does not produce a prospectus or advertises without any reference to a prospectus he commits a criminal offence by virtue of clause 15. Finally, clauses 16 to 18 relate to recognition of prospectuses issued in other member states and makes consequential changes. Mr Speaker, there will be a short amendment which I will be seeking to introduce at Committee Stage which is purely typographical and therefore I will not deal with it at the moment.

I commend the Bill to the House.

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

HON A ISOLA:

Mr Speaker, very briefly my comments on this are to simply ask again whether this simply transposes the EU directive. For the reasons given time and again we will not be supporting the Bill.

HON J J BOSSANO:

Mr Speaker, this is one where I have not had an opportunity of looking at the directive but it strikes me that since the povisions are that when issuing the securities in Gibraltar, in section (3) it says, "When securities are offered to the public in Gibraltar for the first time", is this applicable to people who are issuing in Gibraltar from outside Gibraltar? I thought that in the concept of the Single Market anybody that could issue securities could issue them throughout the territory of the European Union based on authorisation from their originating state. I wondered whether in fact what we are talking about here are people who are issuing from within Gibraltar as it were, or to Gibraltar residents?

HON P C MONTEGRIFFO:

Mr Speaker, in answer to the Hon Mr Isola, this Bill transposes the directive and in fact they should have asked the same question in respect of the previous Bill and I failed to confirm that in the case of the listings directive it also simply transposes the directive. What this Bill does is to provide for the requirements which a Gibraltar company or a Gibraltar issue to the public has to undertake, has to comply with, if it is to offer securities to the public. If the securities in question are of a company established elsewhere in the EEA but which are promoted within Gibraltar there are provisions for recognition of such a prospectus and indeed I made reference to this in my contribution earlier in the second reading. If hon Members will look at Section 16 of the Bill, essentially provision is made there for the recognition of prospectuses approved in the UK or other member states and essentially what it says is that a recognised European prospectus is a prospectus that is able to be promoted in Gibraltar and filed in Gibraltar without anything else being necessary in compliance with this particular Ordinance. Yes, of course, I am being reminded in regard to non-EEA companies, the requirements would apply because there would be a need to ensure conformity of standards, so to speak, with regard to the European regime being established in the legislation. There is recognition automatically by simple filing in the context of the EEA prospectus and non-EEA prospectus would have to comply with the substantive provisions of the Ordinance.

Question put. The House voted.

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

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

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

HON CHIEF MINISTER:

I beg to move that the House do now adjourn until tomorrow at ten o'clock in the morning.

The House recessed at 6.30 pm.

FRIDAY 3RD JULY, 1998

The House resumed at 10.05 am.

BILLS

FIRST AND SECOND READINGS

THE COMPANIES (AMENDMENT) ORDINANCE 1998

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to amend the Companies Ordinance so as to give full effect in Gibraltar to certain provisions of Directive 68/151/EEC (the First Company Law Directive) be read a first time.

Question put. Agreed to.

SECOND READING

HON P C MONTEGRIFFO:

I have the honour to move that the Bill be now read a second time. The purpose of this short Bill is to

complete the work of amending company law in Gibraltar to ensure that it gives effect to the requirements of EEC Directive 68/151 usually referred to as "the First Company Law Directive". Company law in Gibraltar has already been amended, particularly in 1972 and later in 1993 to give effect to almost all the relevant requirements of the First Company Law Directive but there is one provision to which effect has not yet been given. There are also two cases where the amendments previously made for the purpose of giving effect to provisions of the directive need clarification. Clause 1 of the Bill is formal. Sub-clause (2) of Clause 2 gives effect to Article 2.1(f) of the Directive. That sub-clause will provide that any balance sheet or profit and loss account received by the Registrar will require him to publish notice of such receipt in the Gazette. The provision does not require compulsory filing of accounts to the Registrar. It will therefore only currently apply to such companies that must deliver accounts at present, for example, companies registered under Part 9 of the Ordinance that are branch companies. I take this opportunity of perhaps addressing a specific point that the Opposition Member raised in the context of the specific wording of the directive and how this particular Bill seeks to deal with it. The hon Members that have had sight of the directive will know that under Article 2.1 of the directive, the impression is created that the disclosure by companies of, in this case balance sheet and profit and loss accounts, is compulsory and that therefore the query arises whether the transposition to be effected in clause 2(1) of the Bill actually is complete because 2(1) of the Bill simply has the effect when read with the principal section of saying that if the Registrar of Companies receives a balance sheet or profit and loss account then he is required to publish details of such receipt but it does not make clear that the delivery of such a profit and loss account is in fact supposedly compulsory under this First Company Law Directive. Mr Speaker, the matter has been looked at and I have discussed it with the drafters and I am assured that in fact the provisions of the First Company Law Directive do not make compulsory the delivery of profit and loss accounts or balance sheets to the Registrar. Reference is made in this regard to Article 3.4 of the directive which sets out the

requirements in respect of disclosure of documents and which to that extent therefore tallies with the provisions of Article 2 which I have mentioned. I can see that as far as Article 3.4 is concerned the position, if I have to look at it without being an expert draftsman, would seem to not entirely deal with the question of whether it does away with the apparent need for compulsory publication as would seem to be suggested in Article 2, but the advice received is that indeed this First Company Law Directive does not make compulsory the publication of accounts or balance sheets. Indeed, if it did make it compulsory it would seem to suggest that the Fourth and the Seventh Company Law Directives would have been redundant. There would be no need for the Fourth and the Seventh Company Law Directives to have been passed if indeed this already made that compulsory and therefore we are transposing this directive on advice and in a matter entirely acceptable to all concerned in a fashion that makes clear that the obligation to publish by the Registrar is only in the case where profit and loss or balance sheets are in fact delivered in circumstances where they apparently now require to be delivered by companies. I hope that this rather long-winded explanation has made some sense, at least to the Opposition Members who are concerned with that particular point. Sub-clauses (2) and (3) of clause 2 of the Bill amends Section 1A of the Companies Ordinance. The amendments, are simply by way of clarification. There are words in sub-section (1) of Section 281A which were intended to give effect to the provisions of Article 3.5 of the directive about the circumstances in which documents can be relied upon. The words are, however, misplaced in that they appear in the middle of a series of paragraphs to which they do not belong. The new wording accordingly clarifies the position. Clause 3 of the Bill also makes a small clarifying amendment to section 90A of the Companies Ordinance. Article 6 of the directive requires the provision of appropriate penalties to deal, among other things, with an omission to include specified particulars about the company in its letterheads and order forms. The existing provisions of the legislation were badly drafted and the new wording corrects the position.

I commend the Bill to the House.

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

HON A ISOLA:

Mr Speaker, the comments made by the Minister for Trade and Industry in respect of this Bill particularly the ones where he states that he has had confirmation that in fact the Bill is presented in its current form has the effect of transposing or completing the transposition of the First Company Law Directive. This causes an element of surprise in the sense that from our reading of the directive it seems quite clear that the requirement, as indeed with every other single requirement of Article 2.1, requires the compulsory disclosure not simple notification by the Registrar when he receives the document but actually requires and demands the disclosure. That position in respect of every other item which today appears in our section 281 of the Companies Ordinance, for example, the annual returns, there is a requirement here that the annual return is made and of course that is a requirement of section 100 of the Companies Ordinance. There is no such parallel requirement here in respect of the profit and loss account of the company and it is not something we want either, let me be clear about that. The position has been, I understand, since 1972 at the time during which the directives which required to be transposed when Gibraltar joined with the UK in 1973 the European Union, since that time I understand in fact that there was very detailed discussion on exactly this point at that time between the UK Government and Gibraltar Government, this was the only aspect that was specifically refused to be transposed. It would not be transposed, it was rejected by successive Governments and therefore if it comes now, in the form which has been presented by the Minister, then perhaps the years before that have misinterpreted the effects of the directive. Having said that, clearly the wording of the new paragraph (dd) and the wording of (f) are slightly different also in the sense that any balance sheet or profit and loss and the other one says balance sheet and profit and loss, I am not sure if there is any thing that turns. Certainly in the normal course of the meaning of the words there is a difference because one is "and/or" and the other one is "and", there must be some difference but I am not certain what impact or what advice the Government have received

in respect of that part. Certainly also in respect of the amendments to section 2(2) of the Bill that deal with penalty for failing to provide the necessary particulars in the letterheads that it relates to there is also in Article 6 a requirement for penalties in respect of failing to disclose the balance sheet. There are a number of things that are not quite consistent. Having said that, again if what the Minister is telling us is that in fact the passage of this Bill will complete the transposition of this directive without giving effect prematurely to the requirement to file then that is something that we would not have expected and we certainly welcome. Having said that, for the reasons that the Government are now well familiar with, we will not be supporting this Bill primarily because this is a part of a directive that has not been accepted by successive Governments and we do not believe it should be any different now and also obviously because of our position on the question of transposing EU directives within the financial services sector until such time as the position is clarified.

HON J J BOSSANO:

Mr Speaker, the Minister has said that everybody is now satisfied but this does not mean what it seems to mean and what everybody thought it meant up till now. The text presumably of our law will be transmitted by Her Majesty's Government through the European Commission because that is a requirement in the directive. Therefore, if the Commission accepts that the thing is properly transposed as far as we are concerned that is the end of the story because nobody presumably can then challenge it once they have accepted it. I wonder if it is that there is some difference in meaning between "disclosure" and "publication" because in the subsequent directives on publication it actually spells out that the accounts have to be available to the public at the offices of the company or at the offices of the Registrar, whereas in this case the Minister said that there was no requirement in Article 2 to deliver the profit and loss and the balance sheet to the Registrar. Well, there is no requirement in Article 2 to delivery anything to the Registrar. Article 2 does not say anything about delivering anything to anybody. What it says is, "that the member state" that is us, even though we are not the thirteenth member state, "shall take the measures

required to ensure compulsory disclosure of at least the following documents." We have got a Bill that says we are making it, this is the measure that brings about compulsory disclosure of the balance sheet and the profit and loss. We go then to the explanation he has given us in 3.4 and it says disclosure of the documents, that is, of the balance sheet and the profit and loss shall be effected by one of two means, either by publication in the national gazette which is presumably what happens now with all the other information which is gazetted in part 5 of the Gazette which normally has to be bought separately by those who are interested, but is available, or by means of a reference to the documents which have been deposited in the file or entered in the register. The alternatives are, as I read this, that if we take as he has suggested Article 3.4 and Article 2.1(f) together it will be possible to obtain access to the information in 1(f) by the route contained in Article 3.4. That is not true because he then goes on to say that companies who do not provide that information now will have to provide it after the Bill. There seems to be a conclusion that he arrives at which says the Bill implements the directive, one reads the directive and it says the directive requires compulsory disclosure of information in one of two ways, the rest of the information in the rest of the Article is already provided in one of the ways contained in the directive, the information that is missing will continue to be missing and we have completed the transposition. I suggest that the Minister gets to the bottom of how it is possible to comply with an obligation without having to do it so that we can do the rest with all our other EEC obligations and then we might not have the kind of problems that we have.

HON P C MONTEGRIFFO:

Mr Speaker, the hon Member has got to the bottom of what this directive is doing and I have explained what it does. I have also shared with Opposition Members my sympathy with what seems to me a layman's reading of the directive. The layman's reading of the directive would suggest the analysis that the Leader of the Opposition has articulated, namely that Article 2.1 seems to provide for compulsory disclosure. That is not the effect of the directive after taking advice from the draftsman who has stated his reputation on this. His words textually were, "That is not the effect of the directive, the

effect of the directive is not to require compulsory disclosure/publication". I think there is no distinction to be drawn in that issue at all. There is no disclosure required compulsorily by this directive. All this directive is doing is requiring the Registrar to publish yes either the full accounts or the fact that he has received accounts in circumstances where those are actually received by him and the advice the Government have is that this Bill completes the transposition of the First Directive. That explanation must surely be reinforced by the fact that there is a Fourth Company Law Directive. If the Fourth Company Law Directive provides for the publication of accounts it would be a completely redundant piece of legislation if indeed the effect of the First Company Directive was already making such disclosure compulsory. That is the point which I have also discussed with the people who drafted the Bill, to highlight the fact that the interpretation which at first sight would seem to be suggested by the First Company Directive is not the one that is correct.

HON J J BOSSANO:

Does it follow from that then that none of the other eleven elements which we make a requirement in our law for disclosure, at present, of the twelve items that there are here, eleven have already been done and the twelfth is the one that is being done today. Does it follow from what the Minister has said that in fact none of the other eleven are needed either? The fact that we had previously made provision for the eleven to be disclosed means that it was based on incorrect advice going back to the beginning because none of it should have been done or neither should have been done.

HON P C MONTEGRIFFO:

No, Mr Speaker, I cannot give the Opposition Member a history, a blow by blow account of how the different parts of the directive had been implemented in 1972 or 1993 but the section into which this amendment is inserted is the section that does not have any bearing on compulsion. Section 281 simply notes that the Registrar shall cause to be published in the Gazette notice of the issue or receipt by him of documents of any of the following descriptions and then it goes on to provide a list of documents to which we are now adding, by way of

sub-section (dd) any balance or profit and loss account. For example, in sub-section (a) of that section, it says, "Any certificate of incorporation of a company", so presumably when a company is incorporated and a certificate is produced then there is a requirement under 281A for the Registrar to have to publish that certificate. There is nothing in this section that says that it is a compulsion to have a certificate of incorporation, there is another section obviously that will say that before a company is incorporated it requires a certificate of incorporation but there is nothing in 281 itself that deals or addresses the issue of compulsion. 281A purely provides for documents that have to be published if they are received by the Registrar. Mr Speaker, the Government would not have brought this Bill to the House if the effect of the Bill in Gibraltar law would have been to make compulsory today what we are seeking to deal with great care in the context of the Fourth and Seventh Company Law Directive and that is why when this matter was raised by the Opposition Member I particularly listened to him yesterday afternoon in checking the position and of delaying the tabling of the Bill for discussion until the matter could be addressed. It has been to my satisfaction. The domestic legislation we are transposing makes clear that it is only on receipt of such information that publication is required and as normal this legislation has been seen by those that will be transmitting it on to Brussels and therefore we are confident that it will complete the transposition as I have described it.

Question put. The House voted.

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

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

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

THE TRAFFIC ORDINANCE (AMENDMENT) (NO 2) ORDINANCE 1998

HON J J HOLLIDAY:

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

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill makes provision for a new section 4A to the Ordinance. This amendment addresses the issue of responsibility in cases where the owner of a vehicle is a financial institution who allows and authorises the use of the vehicle to an individual under a hire purchase agreement, a loan, or overdraft. As the law stands at present a hire purchase company or financial institution as owners of the vehicle which is subject to a hire purchase agreement, loan or overdraft, could be liable for any act or omission of the person who is in possession of a motor vehicle. An offence committed by the last named category of person should be answerable by the person who has committed it and not by the hire purchase company or financial institution who are the ultimate legal owners of the vehicle. I commend the Bill to the House.

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

HON J C PEREZ:

Mr Speaker, although not all of the copies of the Traffic Ordinance are up to date, having checked three of them already I think that Government Members have made a grave mistake in actually creating a new clause 4A since there is already in the statute a clause 4A which has to do with the motor vehicle testing and the creation of the examiners. Clause 4 in itself has nothing to do with this and therefore if one creates a clause 4A which already exists anyway, one cannot create a clause 4A if clause 4A already exists, I think it is the wrong section completely but.....

HON J J HOLLIDAY:

The issue which the hon Member raises, I actually raised with the Law Draftsman and I was informed that Part 1 of the Traffic Ordinance would make provision which are relevant to the manner in which all other parts of the Traffic Ordinance should be read and understood. This new sub-section (a) belongs to the category of items which are of a general nature and should therefore appear under Part 1 of the Ordinance. The final section of the existing Part 1 of the Ordinance is section 4 so a new sub-section needs to be numbered 4A so that it comes under the ambit of Part 1. Part 2 of the Ordinance commences with section 5 and it is not possible to number the new section 5 without numbering the whole of the Ordinance.

HON J C PEREZ:

The Minister misses the point. There is already a 4A in the Ordinance.

HON CHIEF MINISTER:

Yes, if the point that the hon Member is making, which is the one that I have understood him to be making, that this Bill purports to create a section 4A(1) and that irrespective of the content of it he believes that there is already something numbered 4A(1) and that therefore we cannot have two sections numbered, if he is right of course he is right and this will have to be renumbered and we will

certainly look at that before the Committee Stage and correct it if indeed the hon Member is right.

HON J C PEREZ:

The Minister has certainly explained fully the problem that exists with the lenders but I do not think that this is adequately reflected in the drafting. I do not think the Bill will achieve what the Government Members want it to achieve since one is talking about lenders there without mentioning whether the car in question is registered in the name of the lender or not. We are talking about taking away the liability of the lender and there is no link between the lender, for example, I can lend the hon Member money to buy a car and why should I be liable for anything unless the car is not in my name. There is no link, there is no mention there that the vehicle is registered in the name of the lender and I think that as drafted the Bill does not achieve what the Government Members want it to achieve.

HON CHIEF MINISTER:

I agree that it is a highly legalistic point although I do not think the hon Member is right. The fact is that a lender can only possibly have liability for traffic offences committed with a particular car if the car is registered in his name. If the car is not registered in the lender's name then this cannot apply because there is no other law imposing liability on a lender in whose name the car is not registered. The Bill is designed exclusively to deal with the only permutation of facts that does exist in practice and that is, that as the hon Member knows, at least financed cars it is the practice, in order to preserve their security on the car, for lenders to keep the car registered in their name and therefore it is only those lenders, the ones who choose to keep the car registered in their name that are in jeopardy of being prosecuted for allowing the car to be used for this or allowing the car to be used for that. Therefore, the Bill effectively deals with that because they are the only lenders that are in jeopardy.

HON J C PEREZ:

Mr Speaker, if there is no specific mention of the fact that the vehicle has to be registered in the

name of the lender, I presume that a legal point could be raised that the issue is not adequately covered.

HON CHIEF MINISTER:

Mr Speaker, there is no legal obligation to register it for a lender. Indeed, some lenders do not, there are lenders who take a different view of their security interest and choose not to. There is no legal requirement that a car be registered in the name of a lender. As the law stood before this Bill, if a financial leasing company makes a loan to somebody to buy a car and chooses to keep the car registered in the name of the lender, then the Traffic Ordinance would impose, and the Criminal Offences Ordinance, would impose certain criminal liability. I cannot think of one right now but allowing ones car to be driven without insurance for example is an offence that the lender, who handed over the keys of the car to the real buyer a year ago and has not seen it since, would technically become liable for that criminal offence because he is the registered owner of the car. But if a lender chooses not to register the car in his name then he is outside the scope of all this altogether. All I am saying is that there is no need to create the link because the link is created by the choice of the lender. He either chooses to have the car registered in his name or he chooses not to. What we are now achieving is that regardless of which of those two choices he makes, he is not liable for criminal or traffic offences committed in respect of his car whereas before he was liable if he kept the car registered in his name but not liable if he did not.

HON J C PEREZ:

I understand fully what Government Members want to achieve. We agree with this but I still think that if there is no link in either Section 2 or sub-section (2) where it should state that where the car is registered in the name of the lender, then one is talking about a liability on the lender which is not specified and it is not specified because there is really no liability on the lender unless the car is registered in his name. That is the only point I am making. I understand fully what he is trying to achieve but I think that unless the specific liability which we want to exclude is not fully

spelt out it is not substantially clear what the Bill aims to do, that is the only point.

HON CHIEF MINISTER:

If the hon Member will give way, I will be grateful to him again. Two points, Mr Speaker, this section provides a blanket exemption from all offences created under the Traffic Ordinance. It says "no provision of this Ordinance..." And of course this Ordinance does not mean this Bill, this Ordinance means the whole Traffic Ordinance because this amends the Traffic Ordinance by inclusion of this Bill. What the Traffic Ordinance will read after we have put this Bill into it is that no offence under any part of the Traffic Ordinance shall apply or be capable to being committed by the lender of the car and therefore there is no need to identify the particular offences because the section makes it clear that it applies to all offences.

HON J C PEREZ:

I am not talking about all offences, I am talking about the liability that we want to exclude from the lender and I am not saying that the offences should be spelt out. What I am saying is that if the liability is not described adequately then we are excluding lenders of a liability that does not exist because unless one states that the registered vehicle is in the name of the lender then there is no liability to exclude the lender from and then the Bill does not mean anything.

HON CHIEF MINISTER:

Mr Speaker, as a matter of semantic meaning I know what the hon Member is saying. I have to tell him that in my political and indeed my legal judgement he is making a complete non-point. There is no such risk of ineffectiveness of this section as he is fearing might exist but I will tell him something else and that is that there has been very broad consultation with the finance companies who have submitted it to their lawyers and the Government have only brought this to the House after the widest process of consultation and after everybody who is affected by it has expressed a view that they are content that it is effective. The Government and its advisers think that it is effective, the Finance Companies and its advisers think that it is

effective. The hon Member thinks that it is not effective on an argument on which I sincerely believe him to be mistaken. In those circumstances he will understand that we do not take his point.

HON J C PEREZ:

Mr Speaker, the point I have been trying to make is a drafting one only. It is not that we have any wish to vote against this Bill or anything else, we support it, but the point that is being made is only a drafting one. I repeat the point of clause 4 because I think we need to go back and check that, that is all I have to say.

HON J J HOLLIDAY:

Mr Speaker, I take the point made by the hon Member and obviously the numbering of the amendment will be looked into and amended if required at Committee Stage.

Question put. Agreed to.

HON J J HOLLIDAY:

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

Question put. Agreed to.

THE LICENSING AND FEES ORDINANCE (AMENDMENT) ORDINANCE 1998

HON J J HOLLIDAY:

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

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to amend the Licensing and Fees Ordinance be read a second time.

On a preliminary matter I would like to indicate why section 1(2) of the Bill provides for different implementation dates for sections 2 and 3 of the Bill. Sections 2(1) and sections 2(2) deal with the departure tax payable in respect of persons who leave Gibraltar by air. Up to the 31st March 1998 departure tax in respect of air departures had been charged at two rates, that which applied in respect of airlines on summer schedule and that which applied in respect of winter schedules. The airlines summer schedule commenced on or about the 1st April each year and hence Government have deemed it necessary that the change in the system of charging air departure tax should coincide with these significant dates in terms of air traffic charged by carriers. The tax chargeable on persons who arrive and depart by sea is a different matter. The effective date of the proposed changed date set out in section 2(3) is the 1st July 1998 as this was the date which was agreed with cruise companies to increase cruise business for Gibraltar.

Mr Speaker, let me now turn to the substance of the Bill. Section 2(2) provides that the departure tax from Gibraltar will be on or after the 1st April 1998 be a year-round figure of £7 in respect of all destinations except Morocco for which a lower tax of £3 will apply. This figure was arrived at by examining the yield to Government from air departure tax and averaging it out over a full year per passenger. What it means in real terms is that passengers who fly from Gibraltar in the summer months will pay £2 less tax per person in respect of all except Morocco departures. This makes the Gibraltar route that little more attractive as I am aware that the cost of air tickets was a key element in growing the tourism sector. The downside is the passengers who use Gibraltar in the winter months who will need to pay a higher level of tax but the general trend for airlines is to reduce their fares in the winter months when there is less demand for air travel generally. Government will therefore neither gain or lose through this change in the structure. However, I know that it is helpful to airlines that a single tariff applicable on a year round basis in respect of departure tax. Attention was drawn to this issue recently in the specialist UK travel press. This is because departure tax was previously incorporated into the price of the tickets and did not appear as a separate item. Airlines were unhappy with this because they were

having to pay commission to travel agents in respect of the cost of the air tickets and also in respect of the travelling tax. It is unreasonable to expect an airline to pay commission on a Government tax and therefore agreed with the airlines that the departure tax should be shown separately on tickets by airlines as is common practice in other destinations. Provisions for section 2(2) sets out the exclusion in respect of departure tax and these are standard exceptions.

Mr Speaker, I will now turn to section 2(3) which sets out changes in respect of tax payable in respect of passengers arriving and departing by sea. The major difference which I would like to highlight in respect of sea and air passengers is that air tax is simply departure tax whereas the sea tax is payable in respect of passengers who arrive at or depart from Gibraltar. The tax in respect of ferry passengers remains unchanged at 50p per arriving or departing passenger, the principal change in respect of passengers who arrive or depart on a cruise ship. Section 2(3) provides for a series of discounts to apply in respect of tax in cases where cruise ships have scheduled a series of visits to Gibraltar. This tax will only apply per vessel and not per company. The discount is becoming increasingly attractive with more calls of cruise ships scheduled at Gibraltar and the intention behind this change in the Ordinance is to attract a greater number of cruise calls. The Port of Gibraltar is unusual in shipping circles in that it enjoys a small number of calls from a large number of ships. Other ports are competitors, attract many more calls from a smaller number of ships. Government are now trying to bridge the gap by becoming more attractive to companies who wish to schedule a greater number of calls at Gibraltar. In this connection there will be no tax on ships which decide to use Gibraltar as a turnaround port and the off spin to the economy of having passengers joining cruises at Gibraltar or terminating their cruise here are very considerable and far outweighs the revenue which would otherwise accrue to Government through a tax of sea arrivals and departures.

Section 3 provides for the repeal of the existing provision in the Licensing and Fees Ordinance in respect of passenger tax by air and sea.

I commend the Bill to the House.

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

HON A ISOLA:

Mr Speaker, the operational date of the Bill being the 1st April 1998 I am not sure in practical terms how that will operate and as to whether in fact the airlines have been charging the £7, the £9 or the £4 depending on whatever time those passengers came in. My question is in respect of the first part of the departure tax on airlines. I think that the hon Member has indicated in the past that he anticipates that this will be revenue neutral. We have in fact, my Colleague the Leader of the Opposition has been I know requesting information on passenger tax and in fact we are waiting a response in respect of the forecast outturn which has been broken down and the figures have been transferred going backwards and forwards. We still have not got clear in fact what exactly the amounts of money that are being accrued and whether those figures are correct because my Colleague's information is in fact that those figures are incorrect and we are still waiting clarification. I think the last letter was dated the 11th June and a response has not been received in respect of that. With regard to the matters in 2(3) of the Bill, we would be interested to know what in fact Government anticipates the cost to it in terms of the attractions by reductions to cruise liners in paragraphs (a), (b), (c), (d) and (e). What amounts of money this Government anticipate over a twelve-month period, I am sure the exercise is being done in terms of cost to Government by producing that incentive, it would be interesting to see if the exercise has been done what amounts of money the Government anticipate will be spent in providing that incentive. Another interesting thing from reading the wording of the Bill, I am not quite sure whether the paragraphs (a) to (e) do what they are intended to do unless the Chief Minister stands up and tells me it is another non-point, it seems from my reading of it that in fact, it says that a reduction in respect of every fare-paying passenger travelling on a vessel that calls at Gibraltar between two and four times in a calendar year shall be 10 per cent. In other words the reduction in respect of a passenger on a ship that calls between two and four times gets a 10 per cent discount. Bearing in mind the departure tax is technically due

by the passenger, I assume what the Bill is seeking to do is to say that it is the same vessel that has come here between two and four times. This is an incentive to bring the vessel back, I am not sure whether in fact the Bill has the effect of saying the passenger, if the passenger comes back in two or three, four or five times, where does the discount go? Because it should say, "travelling on...", I do not know what it should say, perhaps Government should know what it should say but it certainly seems that from reading that it does not mean that the same vessel has to come in four times and a passenger who has only been here once gets a 10 per cent discount, it is obviously the ship, otherwise it would be impossible to calculate as to which passenger has been here on what ship but the wording of the Bill is not clear.

Mr Speaker, I would also ask in respect of the first part. I know that the law has always said, "fare-paying passengers" and although it is something that has appeared in the previous Legal Notices affecting the passenger tax I would be interested to learn whether in fact fare-paying passengers includes private aircraft. I am not sure that private aircraft attracts departure tax as the owner/occupiers I suppose are not fare-paying passengers because it is a private jet. I wonder whether that situation will attract passenger tax?

HON CHIEF MINISTER:

Mr Speaker, it is not entirely a non-point, I suppose there is some pedantic logic to the point that the hon Member is making. I think that the intention of the legislation is clear. The liability is imposed on a passenger in respect of his arrival on a ship at a particular time. These are not cumulative rights, the passenger arrives, he has to arrive once in one ship and then again in another ship to accrue. It is capable of that strange interpretation but I can assure the hon Member that it is a strange interpretation and it is certainly not going to be the way that the Ordinance is administered by those who have to collect the tax. I think that the intended meaning of the legislation is clear especially when read together with the language used in the rest of the Ordinance that is being amended and that is that it relates to the particular cruise ship visit on which the passenger finds himself. In any case the hon Member

knows that in practice, I cannot tell him whether as a matter of strict legal imposition, arrivals and departure taxes are actually the legal liability of the carrier or of the passenger. He has asserted confidently that it is a liability placed on the passenger. He may be right but I would not assume that without checking it. In any case, he knows that in practice whomever the tax is imposed on the practice of it he knows it to be that the carrier is the one who pays and includes the arrival and the departure taxes in the fare or ticket in question. Whilst, certainly somebody who was wanting to create that difficulty might be willing to justify that interpretation given that this is going to be administered by the Gibraltar Tourist Board on behalf of the Government of Gibraltar that is not the way they will do it.

HON A ISOLA:

Mr Speaker, as the Chief Minister said it is not a major point and I do not think it is something that is going to be challenged but if the word instead of "every" was "each" and if the word instead of "calls", "has called", then it would make the language a little bit clearer. I was not in fact suggesting that the fare-paying passenger himself pays the departure tax, the cruise ship pays the departure tax, but in fact section 2(1)(ii) says it two lines above, "by the cruise ship", but it could I suppose at some stage, some smart individual could come and say something that is clearly not intended and my comment was simply that if one makes those two changes instead of "every", "each" and then instead of "calls", "has called", then one is specifically relating it to the ship as opposed to anything else but it is a small point and I do not think it is worth wasting too much time on it.

HON J J HOLLIDAY:

Mr Speaker, I would just like to clarify some of the points that have been raised by the Opposition Member. I would like to confirm that airlines have been collecting the new level of departure tax as from 1st April this year and that the level of departure tax to appear as a separate item on the ticket has been proposed in this Bill. I must stress that these changes have been done in full consultation with the airlines, well over a year ago. In fact, possibly more like 18 months and it

was logistically appropriate that we should introduce this on the 1st April at their request because of various changes which had to be undertaken in computer programming et cetera. The second point that I would like to make is that this exercise as far as air passenger tax is concerned is revenue neutral assuming that obviously figures remain at the same level. The figures that the exercise was carried out not based on information as appears in Government finances where they may be a lag in terms of previous years collection of actual departure tax from the Terminal Management, but that the figure and the exercise were based on the information that was supplied by the airlines in terms of number of passengers that have actually gone through Gibraltar Airport and these have obviously been checked with Terminal Management who keep their own records as to actual figures and what we have done is that we have had the exercise done based on the actual number of passengers during a twelve-month period. The hon Member questioned the exercise in terms of possible loss or increase in Government revenue and I can say that the exercise has been done in terms of passenger tax on cruise ships but I can also say that this exercise has been used as part of our marketing strategy in order to entice new operators to come into Gibraltar. I can say that already this exercise is starting to pay dividends and there is one particular cruise company who have not come to Gibraltar before who will be coming to Gibraltar 24 times next year as a result of the discount that we are offering which possibly these people would never have come. There is another company that will be coming for the first time next year and have agreed to come in 12 times, again possibly attracted by the sliding scale being offered by us. Let me tell the House that this is actually a practice that is now being carried out by a number of competitor ports in the Mediterranean so we are not actually giving them something which is new to the industry but it is certainly new to Gibraltar and I think that the amount of bookings that have been already programmed for next year shows that this marketing exercise is starting to pay dividends in itself. We are quite optimistic that the actual revenue will increase but that will be as a result of increase in number of cruise calls and passengers rather than the opposite effect.

Question put. Agreed to.

The Bill was read a second time.

HON J J HOLLIDAY:

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

Question put. Agreed to.

THE SOCIAL SECURITY (CLOSED LONG TERM BENEFITS AND SCHEME) ORDINANCE 1996 (AMENDMENT) ORDINANCE 1998

HON H CORBY:

I have the honour to move that a Bill for an Ordinance to amend the Social Security (Closed Long Term Benefits and Scheme) Ordinance 1996 be read a first time.

Question put. Agreed to.

SECOND READING

HON H CORBY:

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

Mr Speaker on the 5th January 1998 the Social Security (Closed Long Term Benefits and Scheme) Ordinance was amended to provide a further opportunity to pay arrears of social insurance contributions to those persons with incomplete records who were in employment in Gibraltar on the 6th January 1975 but did not elect to do so at the time. This option was also given to widows and widowers of insured persons who are eligible but are now deceased. The closing date for the payments of these arrears was the 5th April 1998. It so happens that several applications of persons who satisfy all the conditions for payment were submitted to the Department of Social Services after the expiry date. Mr Speaker, the purpose of this Bill is to extend the period of the 30th July 1998 and thus accommodate those who failed to apply before the closing date. I commend the Bill to the House.

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

HON R MOR:

Mr speaker, the explanation that the Minister has given is practically word by word the explanation on the Explanatory Memorandum. It is rather surprising that the Explanatory Memorandum has about 200 words just to say that the date is being extended from the 5th April to the 31st July. Given, that we are already in July, might it not be fair to extend that date further? That is one point I would like to make. Mr Speaker, it is rather strange that just that little amendment to the Bill, the extension of the expiry date, that we should have reproduced practically the whole of the Bill that was passed here on the 5th April and in fact if one goes paragraph by paragraph it is almost exactly word by word with just the amendment that wherever the phrase within three months of the date of coming into force of this Ordinance, which was the wording in the previous Ordinance, one would now have to read prior to the 31st July 1998. Practically the whole of the previous Ordinance is repeated in this amendment except that there is one little difference in page 257 where in the previous Ordinance in paragraph 7, it said, "For the avoidance of doubt a reference in this section to section 3A of the Social Insurance Ordinance, is a reference to the section 3A enacted under section 2 of the Social Insurance (Amendment) Ordinance 1973, and as amended from time to time". That was the wording in the last Ordinance. In this there is a difference, it says, "For the avoidance of doubt a reference in this section to a Section 3A of the Social Insurance Ordinance is the Social Insurance (Amendment) Ordinance 1973 and as amended from time to time". If everything else has been extracted exactly the same why this particular little bit is different now is something which we have not had an explanation on unless it is that a line has been missed out, I am not sure. In the Bill at present in this House, if one looks at sections (a) and (b) in section (a) the second line is missing from (b) as an extra line. There are three lines in (a) and four lines in (b) and on the original Ordinance they were both exactly the same.

Mr Speaker, when the Ordinance was brought to this House in January 1996 we raised the point that an anomaly would be created for some people who might be affected by the date that was set down, that is the 6th January 1975. The Ordinance says, "every

person who was required to be insured under the 1955 Ordinance on the 6th January 1975", I remember that at the time we raised the point that there could be people who had not necessarily insured on that particular day because either they may have been unemployed or because they may have been away from Gibraltar and a whole series of circumstances which could arise and I remember that after having raised this matter further we were told at one stage that there were some 77 persons who had not qualified because of the fact that they were not working on that particular day. Mr Speaker, I think it is a convenient occasion where we should ask the Government to reconsider once again and allow for persons who might be allowed to pay back their arrears. I know one of the arguments which the Chief Minister raised was the fact that Spaniards might be involved, but I doubt whether that would be the case because Spaniards were withdrawn in 1969 and practically most of them would not have been working here after 1975 in any case. Mr Speaker, those are the points that I wish to raise.

HON CHIEF MINISTER:

Mr Speaker, just starting if I could with the last point that the hon Member has made, it is not Government policy at this stage to do so. We had this debate at the time of, I do not remember, it was not at the time of the original Ordinance, but I recall that we had it at some subsequent point. The Government policy decision made at the time and reflected in the drafting and therefore in the way that the rules applied was that we wanted to create the same windows of opportunity as had already been created in the past and the hon Member knows that in the past there had always been created by reference to the 1975 date because we could be completely certain that that exercise had withstood the test of time and that no one had been able to mount a successful challenge, no one from outside had been able to mount a successful challenge to the reopening of an opportunity to pay arrears in the context of that date. Of course it would be possible for this or any other Government in the future to take the decision to give a fourth opportunity to repay arrears by reference to some different cut-off date. There is nothing to prevent a Government from adopting that position. We have not done so because we had wanted, in the context of the hon Members being aware of the whole pension

scenario in Gibraltar being under the microscope, the Government did not wish to take unnecessary risks. It would be possible for the Government to consider and take advice about whether moving the date 1st April 1975 onwards to some other date, 1976 or 1977 or whatever, and it would be possible for the Government to take advice whether that would be as innocuous in relation to possible challenges as the 1975 date has proved to be. It is just that we have done it and rather than take the risk of doing it in an ill-considered way that might bring consequences it just has not been done. There is nothing to prevent the Government from doing that but it would always have more risk because advice does not always turn out to be correct and it is much safer to rely on tried and tested events than on a lawyer's opinion that may or may not be upheld in court. Government do not discount the possibility of moving in that direction but have not so far taken a policy decision to actually move in that direction and it is not so much a question of wanting or not wanting to benefit the 77 persons. If the hon Member says there are 77 people in question as rather not wanting to open the floodgates to the whole category of people, it is just a question of looking into it. I have not given this much thought but I suppose that wherever one puts the cut-off date there are going to be people on the wrong side of it and if we do it in 1976 or in 1977 the hon Member is going to say that there are people in 1978. There is always going to be that point. I am sorry that the hon Member should not like the fact that the Explanatory Memorandum is too long. This must be another example of the obsession under which we labour on this side of the House to give as much information and explanation as possible which is clearly anathema to Opposition Members. Obviously, when these Explanatory Memoranda are drafted the Government are aware that Opposition Members are aware of what has happened in the past and are familiar with the philosophy and the effect of the principal Ordinance but of course these Explanatory Memoranda are not drafted exclusively for the benefit of this House. These Bills are published in the Gazette, they are sometimes read by ordinary citizens and the Explanatory Memorandum is also intended to give them and indeed the press as much background information as possible and the hon Member should not consider, if he regards the Explanatory Memoranda to be an unnecessarily

detailed fool's guide, that it is not that I think that his grasp of the principal Ordinance requires such detailed explanation for him. I think it is just for the consumption for those who are not familiar necessarily with the Ordinance.

As to the point that the whole section is set out again, Mr Speaker, it is a drafting technique. I suppose it would have been possible to have formulated the clause here in this Bill, however, I think that draftsmen prefer, when it is not too long to set this out because it means that people can see the effect of the amendment in the context of the principal. But the hon Member is right, it would have been an equally legitimate drafting device to have altered the date references without setting out the whole section verbatim. I think it is just a question of drafting technique and I do not think anything particularly turns on that. I think that it seems that there is a misprint and we can have this obviously checked on page 257 before the Committee Stage. Either the word "and" is superfluous at the end of the second line of (a), because it actually does not read with it there, or and I accept that without research the most likely explanation is that there is a whole line missing between the third and the fourth line of (a) as printed. I am grateful to the hon Member for pointing this out and we shall move an amendment accordingly at Committee Stage.

HON J J BOSSANO:

Mr Speaker, I agree that it is wise to take advice of any potential risk of changing the date for those people who are at present unable to pay the arrears for that period of time. In fact, it does not seem to me that there can be such a risk and it does not seem to me that in fact changing a date can leave other people on the wrong side because we are talking about a period in the past when insurance was not compulsory and the numbers of people still around who were deprived of the opportunity of paying insurance because the law said one can only pay insurance if one's earnings are below £500, those are the people that are coming in. However late we put the cut-off date, we are talking about very elderly people and we cannot bring more people in because it is not that if we have a cut-off of 1980, more people will be paying insurance up to 1980, they have only got to be paying insurance

prior to the compulsory date. Presumably, post the compulsory date, people can pay the arrears already. In fact if they do not pay the arrears they get threatened with legal action for not paying arrears. There are people getting letters saying they must pay arrears for more than one year and that if they do not pay they will be taken to court. So I do not understand how somebody can be told, "You cannot pay if you want to but we take you to court if you do not want to". The two things do not seem to sit side by side and there are letters that are going out from the Arrears Unit telling people, "You owe arrears of insurance of two or three years ago and action will be taken if you do not pay". What they cannot do is say that if one wants to pay we cannot let them pay because one can only pay one year. I think the post compulsory period, maybe there is some anomaly there that needs looking at, maybe some part of the Ordinance says one cannot pay and some part says one has to pay. That in fact shows that the scenario post the compulsory date is a different one from the scenario pre the compulsory date and therefore I can only think that the reason why the date was there in the first place was simply because that was the date when it was made compulsory so people were told initially when the first window of opportunity occurred, it is compulsory from today and obviously given the fact that one has in the Ordinance a requirement to have a minimum number of stamps to get a minimum pension which averages 13 contributions a year, and people were caught at different ages, if in 1975 it was made compulsory and somebody was 56 years old in 1975 he would only have been able to pay for nine years. He would then have found himself in a situation where he was obliged to pay insurance for nine years but was not entitled to a pension because if one contributes for less than 10 years one gets nothing. It would have been a completely unacceptable situation. It would have been a tax because one would have said to people that they were required to contribute to an insurance to which they would never be entitled. When they were made to pay they were told, "if you are working today and you are required to pay today, you are given the opportunity to pay for all the previous years". I think that is probably how it came about and I think if we are going to look at the debate in 1975, I was here then but I do not remember the exact argument but I imagine we will find that that is the nature of the argument. If that is indeed the case then there is no particular

significance other than that to the cut-off date and therefore I think that should be taken into consideration by the Government when they decide to look at this possibility. I would simply urge the Chief Minister to try and given it some priority given that the numbers are a declining number because those involved cannot increase, there can only be less of them with the passage of time.

Question put. Agreed to.

The Bill was read a second time.

HON H CORBY:

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

Question put. Agreed to.

THE UNFAIR TERMS IN CONSUMER CONTRACTS ORDINANCE

HON K AZOPARDI:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar Council Directive 93/13/EEC on unfair terms in consumer contracts be read a first time.

Question put. Agreed to.

SECOND READING

HON K AZOPARDI:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill transposes into Gibraltar law directive 93/13/EEC on unfair terms in consumer contracts. The legislation breaks new ground in consumer protection since the main effect of this directive is to introduce for the first time into our law of contract the general concept of fairness on contractual terms. The directive prohibits the inclusion of unfair terms in standard form contracts between a supplier acting in the course of business and a consumer. The proposed legislation will allow ordinary consumers through designated bodies to challenge the validity of clauses in contracts which they personally are not

in a position to negotiate. An "unfair term" is defined as "a term which contrary to the requirements of good faith, causes a significant imbalance on the party's rights and obligations arising under the contract to the detriment of a consumer". The directive carries with it an exhausted list of terms which may be but which are not necessarily held to be unfair. Schedule 2 contains a list of some of the matters which should be considered when making an assessment of good faith. Unfair terms are not binding on the consumer. The Ordinance applies with certain exceptions to any term which has not been individually negotiated in contracts concluded between a consumer and a seller or supplier. Schedule 1 contains a list of contracts in particular terms which are excluded from the scope of the Ordinance. In addition, those terms which define the main subject matter of the contract or concern the adequacy of the price of remuneration as against the goods and services supplied are not to be subject to assessment or fairness provided that they are in plain, intelligible language. The Ordinance further provides that persons or groups of persons having as their sole or principal aim the promotion of the interests of consumers may apply to the Minister for designation under the Ordinance. Designated persons may consider complaints about the fairness of any contractual term drawn up for general use and may, if appropriate to do so, seek an injunction to prevent the continued use of that term or a term having like effect in contracts drawn up for general use by a party to proceedings. In addition, the Minister is given the power to arrange for the dissemination of information and advice concerning the operation of the Ordinance. I commend the Bill to the House.

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

HON A ISOLA:

Mr Speaker, there are certain differences which are originating in the directive and I am not sure if it is a question of applying the directive in a different way or it is in fact giving a different meaning to the directive in the way it is being transposed. First of all there is a question whether it is unfair or not. Obviously in accordance with part of the Schedule which are

derived from the directive, if there is a determination or a belief that it is unfair, then under Article 7, that is taken to a competent authority or the courts for that determination to be made. There is then obviously the provision under Article 7 that if it is unfair then there is provision to seek an injunction to prevent it from continuing to be applied to that or other persons. In the law that is being transposed there is a slightly different change which first of all the question arises as to whether it is fair or unfair. It then is submitted to a designated person and obviously a designated person, as the Minister has already said, is somebody who in the view of the Minister represents the interests or, for example, somebody who represents the consumers. The competence of that person or authority to determine that question is one that we will have to see when that designated person is appointed. It seems that it would be more appropriate, for example, to have a tribunal like we have a Trade Licensing Tribunal, to have a Consumer Services Tribunal which would have the competence not in name but in practice to determine questions which really apply to the law as to whether it is fair or unfair. Once that designated person determines whether it is fair or unfair there is a question mark then as to what the effect of that is. If the designated person says it is unfair what is the effect of that, where are the teeth that come to that? It is clear that once one takes the next stage then one has to go to court to apply for the injunction. It is that middle stage that is not clear as to what the effect is of the designated person designating something that is unfair. I cannot quite follow the difference in the manner in which it operates. As an example the directive states, "and in particular unfair terms, either before a court or before an administrative authority competent to decide upon complaints or to initiate appropriate legal proceedings". I am not sure whether the effect of the designated person is in fact that administrative authority competent to reach those decisions. If, for example, the Housewives' Association or any other association comes to the Minister and says, "We believe we are an appropriate person to determine whether certain aspects of consumer services and trading, we have an interest, which is a legitimate interest on behalf of our members", whether that would be sufficient for them to be appointed as a designated person. If so, and they are deemed to be designated persons

whether they are in fact competent to determine whether a part of a contract is fair or unfair. Article 7 states that, "The member state is to ensure that in the interests of consumers, adequate and effective means exist to prevent the continued use...". "The means referred to in paragraph 1 shall include provisions whereby persons or organisations, having a legitimate interest", and this is where I assume the designated persons comes in, "may take action according to the national law before the courts". When we are dealing as the Minister knows with injunctions and injunctive relief there are certain prerequisites, obviously there are undertakings and damages that have to be given but those provisions would be excluded by the provisions of this Ordinance and damages would not be a remedy. I am not sure how this interplays with those prerequisites of injunctive relief. From the reading of the Bill it is not clear to me as to what the position is but I would ask for information to clarify in practical terms how a complainant who seeks to use this Bill or Ordinance when it comes into effect to gain his protection that the directive seeks to give him, how, in practice, it operates because there is a difference between the directive and the Bill as far as I am concerned and further what the requirements are before the Minister will designate a person under clause 8(1) of the Bill, what the criteria are for the Minister to be satisfied if that person is in fact suitably qualified or has a legitimate interest to qualify him as a designated person? Clearly, the principle involves unbiased people and I would be interested to see what the criteria the Minister intends to set himself when appointing people. Again, one of the points that I have most interest in is this business of the ability of the designated person to determine a contract unfair and if they do, what happens? Does the fact that a contract or part of a contract is determined unfair, what is the relationship between the parties legally by virtue of this Bill? There is also another question, if indeed a designated person brings legal proceedings for the injunction, who would in fact foot the bill for those proceedings? In the event of the application being unsuccessful, would the citizen, that has brought the complaint be himself liable for those costs if he looses which would be the cost of the trader as well as the consumer or will in fact the designated person, in other words, the competent authority, if one wants to call it that, be required

to foot that bill? I would be grateful for those answers.

HON K AZOPARDI:

Mr Speaker, as the hon Member says, there are some slight differences between the draft prepared which seeks to transpose the directive and the directive itself because the directive as the hon Member will have noticed sets down principles of consumer protection and asks the member states to interpret and legislate on those principles. Even though our law is different to that of the United Kingdom, given that it is the most proximate member state that has similar principles to us, our Legislation Support Unit has drawn on the English transposition of the directive to base this current draft and so if the hon Member has an opportunity to look at the Unfair Terms in Consumer Contracts Regulations 1994, made under the English legislation, he will see that it is almost verbatim. That is the first point.

HON A ISOLA:

Mr Speaker, I appreciate that but obviously in this particular area of law there is a pretty big difference between ours and the UK. There is no Sale of Goods Act which there is in the UK and there is not here and that deals specifically with the areas that we are dealing with here. There is no Consumer Credit Acts, those are specifically what this Bill seeks to deal with because the Bill excludes Employment Law which is very similar in Gibraltar to the UK; Succession Rights, we know that the Succession Rights are exactly the same; Rights under Family Law; again very, very similar; the Distribution of Matrimonial Assets; the Incorporation and Organisation of Companies and certain regulatory provisions in Gibraltar on the provisions of principle. We are dealing with an area principally which is consumer trading, consumer affairs, the shopkeepers, the hire purchase contracts. These are specifically areas where our laws are very, very different from the UK and that is the reason why I am making the point because if we are going to adopt exactly the same as the UK, the law in UK is very different to what it is here on the specific areas on which this Bill will deal with and that is why I specifically raised that point because if we have to follow the UK we are going to find ourselves in difficulties because the

legal position there and here are two very different things.

HON K AZOPARDI:

I accept that the statutory provisions in consumer protection are different in the United Kingdom than it is in Gibraltar but I do not accept that basic rationale behind the law and the essence and the jurisprudence behind the concepts of equity and the remedies that are available in the Supreme Court of Gibraltar and the High Court of Justice in the United Kingdom are different. They are essentially the same and whilst the statutory provisions may be more extensive in the United Kingdom there is still consumer legislation in Gibraltar and the relationship can still be governed by similar transposition even though there may be specific statutory differences between what is the consumer legislation in the United Kingdom and what is consumer legislation here in Gibraltar. There may be more extensive Sale of Goods Act in the United Kingdom and our Sales of Goods Ordinance here is more restrictive but in essence, if this is governing the relationship between seller and supplier it will have to be seller and supplier in accordance with the law of that particular jurisdiction. The basic principles of our law are more similar to the United Kingdom and therefore allows us to guide ourselves by that transposition than they would be under French or Belgian law and so that is the point that I am making. I accept that the hon Member sees the differences between specific statutory provisions and I see them as well but they do not necessarily mean that we should not guide ourselves by this form of transposition because the basic framework will then have to be applied in accordance with the specific consumer sections in Gibraltar.

HON A ISOLA:

I hear what the Minister is saying but it would seem to me that to base our laws on what is the or to copy, basically, the member state that has the law most similar to ours which is what the Minister is saying, may not be the most appropriate way of doing it, it might be right in many other directives, we can simply transpose a directive like we have done in the Transport Undertakings or a whole list of others which also engage principles and we can

simply say that we transpose the directive as it is because I think it is safer to do that than to copy the UK law almost on a word for word basis because it is the closest to our own. I think it may be a case where the Legislation Support Unit should actually consider the directive and deal with the directive in a way which is best suited for Gibraltar's needs not simply to copy the UK.

HON K AZOPARDI:

Two points from what the hon Member is saying. In the first place I think it is quite proper for the Legislation Support Unit to guide itself and of course to depart if it sees that there is merit in departing from that framework but in this case they have felt that this is the proper framework. We cannot transpose the directive verbatim as the hon Member suggests because the directive only sets up principles and instructs the member states to enact legislation to put into effect those principles. If we transpose the directive verbatim all we would be saying to ourselves is we have got to do something about it but we would not be doing anything about it and so this Bill intends to put into place that framework which the directive orders us to do and we think that this is the proper way to proceed. Of course we should guide ourselves and not transpose everything verbatim under UK principles but there is no need we think in this case to re-invent the wheel for specific legislation in Gibraltar because the courts will ultimately have to apply this Ordinance in accordance with the Consumer Legislation in Gibraltar. So there is no difficulty and nothing in this Ordinance and nothing in the English regulations which we are basing ourselves on will prevent us to do that.

HON J J BOSSANO:

Is it not the case in fact that what is being done is being done because the Government want to do it in respect of goods because there is no requirement in respect of goods, is that not the case? The directive clearly is designed to complete one element of the single market in goods and it is under Article 100A but it also concerns the supply of services. Presumably, we are only required to make provision to transpose the directive to the extent that it concerns the supply of services which is the only thing that we can supply into the single

market. We cannot supply goods into the single market and the preamble and paragraphs in the directive clearly says that it is in order to facilitate the establishment of internal markets and to safeguard the citizen in its role as a consumer when acquiring goods and services under contracts which are governed by the laws of a member state other than his own. We are entitled to have whatever consumer legislation we want for our own citizens but this directive is to protect customers outside Gibraltar as part of the creation of the single market and it is being done under Article 100A and to the extent that this is applicable in Gibraltar at all it is only applicable because we form part of the single market in services but we do not form part of the single market in goods. Another directive affecting the free movement of goods has not been transposed previously, is that not the case? All the elements of goods we are free in fact to make provision in Gibraltar as we wish irrespective of what the law is in UK or in any other member state and of course it would make sense if we have one law already to do it for services that we also do it for goods for other reasons but it does not have to be following the UK transposition of the directive because we do not have to transpose that.

HON K AZOPARDI:

No, Mr Speaker, I do not accept that assessment. The Government received legal advice in May 1994, which the Legislation Support Unit has given me a copy of from DTI solicitors in London, which comments that even though this directive is made under 100A, and I understand all the points that the hon Member has made but this was essentially a matter of consumer protection and that in this case it should be fully transposed in Gibraltar. That is indeed the case in respect of other matters, I am told by the Legislation Support Unit, and so I cannot accept his assessment on that basis even though I understand the point that he is making.

If I could move on, Mr Speaker, to the other points being made by the hon Member, the intention is not that the designated person should assess and determine the matters. The designated person under section 8 will stand in the shoes of the person described under Article 7.2 of the directive as a person or organisation having a legitimate interest.

The directive requires two things: it requires that the domestic legislation specifies people who would have a legitimate interest or who could be designated as such and then also requires that there should be a court of competent authority seized of the matter who could ultimately be seized of the matter which could determine any application brought to it that any particular term of a contract is unfair. It is a two-stage process, there is no suggestion that a designated person will make an assessment of whether it is fair or unfair. The consumer group will have to decide whether it should bring what is essentially a class action. The consumer group will have to assess it but it is an individual person assessment they have to make on the likelihood of the success of the proceedings. Having made that decision the person or the entity that ultimately decides whether the term is fair or unfair is the Supreme Court. That is the intention behind the Ordinance and certainly we think is clearly on the face of the Ordinance. The competent authority or court talked about again under Article 7.2 is in Gibraltar the Supreme Court. The hon Member also raised the point on costs, what would happen if the proceedings go for or against the person bringing the class action. There is nothing in the directive that talks about costs and so our view in transposing this directive is that no doubt the court, of course the court will be better disposed to make that assessment in due course if it did get a case of that type but no doubt the court will apply the same usual principles that it applies in any action in any civil proceedings that reach the Supreme Court. There is nothing in the directive that asks to do something and we are not going to make a specific provision in this Ordinance, the court will make a determination of that aspect. I suspect that it will decide the costs in favour of the person in respect of whom the judgement has gone or it may take the view that in these cases there should be no order as to costs because of the particularity of the case but that is a matter for the Supreme Court.

HON A ISOLA:

If the Minister will give way? Mr Speaker, am I right in saying that if a consumer feels that there is a unilateral contract which is determined as unfair, as provided for in the Schedule to this Bill, he then goes to the designated person and the

designated person says, "Yes, I agree" but that has no impact on the seller. So it is exactly the same as if the individual consumer today goes to a designated person or goes to a lawyer, the lawyer says, "Yes, I agree, let us go to court". Is that the same? Is the only difference that we now have within our laws provisions which are deemed to be unfair unless one can satisfy the court that one is not within those provisions, is that the actual case.

HON K AZOPARDI:

Yes, my understanding is yes, that that will be the case. Section 5(1) says, "An unfair term in a contract concluded by a consumer and by a seller shall not be binding on the consumer". If the seller says, "All right, notwithstanding that that is the case I do not consider it to be an unfair term". Then the person will have to enforce his rights. What this Ordinance does is it gives the person rights that they may have to be enforced ultimately if the person with whom he has entered into a contract does not accept that the term is unfair. Yes, ultimately recourse to the Courts may be necessary to establish the point. It is the only recourse under this Ordinance but this Ordinance does not include a restrictive subsection. This Ordinance specifies a mandatory order that can be made in these proceedings but then the court is free to construe this piece of legislation in the manner that it sees fit and if it thinks that this legislation as it contains no prohibitive subsection on the remedies, that the effect of it is that other remedies are available, then no doubt that is also the case. I think I have dealt with all the points given by the hon Member.

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 either today or later in the meeting.

Question put. Agreed to.

THE MEDICAL AND HEALTH (AMENDMENT) ORDINANCE 1998

HON K AZOPARDI:

I have the honour to move that a Bill for an Ordinance to amend the Medical and Health Ordinance 1997 to transpose into the law of Gibraltar Commission Directive 98/21/EC and to effect other minor amendments 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 short Bill intends to do three things. In the first place it intends to make some minor amendments, some typographical errors or amendments that were intended to be made at Committee Stage during the passage of the 1997 Ordinance which were omitted such as that in sections 2A and B of the Ordinance. Secondly, its purpose is to transpose the EEC directive mentioned which amends lists of specialised medicine categories in the case of the Netherlands, Belgium, Luxembourg and Sweden and, thirdly, and of more interest domestically, the purpose of the amendment in 2C is to allow Enrolled Nurses to stand for election to the Nurses, Midwives and Health Visitors' Registration Board and to allow them to vote. Hon Members will recall that one of the changes brought about by the 1997 Ordinance was that for the first time two nurses elected from among the body of Registered Nurses were elected to be members of the Nurses, Midwives and Health Visitors' Registration Board. It was the intention of the Government to allow all nurses who were registered in any part of the Register to stand and vote at those elections. There are several parts of the Register and there are two essential categories of nurses that are on those Registers - Enrolled Nurses and General Registered Nurses. Because section 28 of the Ordinance mentions that none of the rights conferred on registered nurses would be conferred on enrolled nurses, at the time of the election last November or December, management argued, I think rightly, that enrolled nurses could not vote or stand for election at those elections. It had always, as I say, been the policy of the Government

to allow them to do so. The Government have also received representations from the Unions on this issue and the intention behind this amendment is to allow enrolled nurses to stand for election and to vote to elections at the Nurses, Midwives and Health Visitors' Registration Board. Those are the three purposes behind the Bill. 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:

Just to say, Mr Speaker, that we are satisfied with the explanation the Minister has given us. The Opposition will be supporting this Bill.

HON J J BOSSANO:

Given the fact that the directive is so recent, can the Minister say when it was done in the United Kingdom and whether it was done in other member states?

HON K AZOPARDI:

The directive specifies that we have to put into place this amendment by December this year. I cannot answer the hon Member when it was specifically done in other member states, but whether it was done before or after is immaterial to the extent that it requires us to do it anyway and we would have that obligation to fulfil by December. I shall certainly look at when it was done in other member states if he is interested and pass on the information to him.

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 or at a later stage in this meeting.

Question put. Agreed to.

THE SPECIFIED HAZARDOUS WASTE (INCINERATION PLANTS) ORDINANCE 1998

HON K AZOPARDI:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar Council Directive 94/67/EC on the incineration of hazardous waste be read a first time.

Question put. Agreed to.

SECOND READING

HON K AZOPARDI:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill should be read together with the Public Health Ordinance (Amendment) Bill 1998, which follows on the agenda. Together, they transpose Directive 94/67/EC into Gibraltar law. Rather than insert all the provisions of Directive 94/67/EC in the Public Health Ordinance, the Public Health Ordinance (Amendment) Bill 1998 directs the reader to the more specific provisions of the Specified Hazardous Waste Incineration Plant Ordinance 1998. This means that the Public Health Ordinance will not be unnecessarily cluttered with provisions which are very technical, detailed and specific and which may not be of relevance to our own domestic situation or of immediate relevance to our domestic situation. The objective of directive 94/67 on the incineration of hazardous waste is to ensure that specified measures and procedures are in place to prevent or reduce as far as possible negative environmental effects arising from hazardous waste incineration. The directive addresses the pollution of air, soil, surface and ground waste, together with risks to human health. It aims to achieve a high level of environmental protection. I commend the Bill to the House.

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

HON J GABAY:

Mr Speaker, generally Opposition Members welcome any steps which are taken in support of any global initiative in respect of having a cleaner, healthier

and safer environment. On that principle we find merit in the directive. As it says in the Explanatory Note, measures and procedures to prevent and reduce as far as possible negative effects arising from hazardous waste material. However, in reading the Bill and its complicated technicalities, as a layman before the Chief Minister reminds me of the quality, it seems to me when I read clause 6(2) that it says, "The following plants are not incineration plants for the purposes of this Ordinance:

a. incinerators for animal carcasses or remains;

b. incinerators for infectious clinical waste provided that such waste is not hazardous waste; and

c. municipal waste incinerators also burning infectious clinical waste which is not mixed with hazardous waste".

So, it would appear really that we are not within the embrace of this legislation and therefore I wonder why there is a need to pass it at this stage since it would appear as I say from my own limited knowledge that we are just simply burning municipal waste and therefore that excludes us from the provisions of this directive.

HON J C PEREZ:

Mr Speaker, I would ask the Minister to specifically state what the actual application of this Bill means to Gibraltar, whether there are repercussions as to the emissions of the generating station, the distillers, the incinerator itself, the waste water that goes out of the distillers into the sea, whether it has any actual, physical application today or indeed whether the Minister has had proposals for some other plant which would need to comply with these regulations, or whether it is just that we want to pass it in the law in case someone applies for a plant of this nature in the future? I find it hard to believe that a Bill that was published on the 25th June should come to the House a week later to apply a directive that we have time to apply it until the year 2000 and perhaps as we read it there is no actual application to it in Gibraltar, perhaps the Minister could clarify some of those points?

HON J L BALDACHINO:

Mr Speaker, following up from what my Colleagues have said, first of all, what my Colleague Mr Perez has said and what the Hon Mr Gabay has said, that this does not apply to refuse waste, which is the only thing that we have but apart from that, if ever we have any plants that fall under this category, do we have the equipment and do we have to employ any personnel extra to monitor this? Will we have to buy any equipment to keep monitoring what is being passed today?

HON K AZOPARDI:

May I deal with the last point first. It is the view of the Government that it is not appropriate or indeed in Gibraltar's public interest to put it to the public domain or to discuss issues of Gibraltar's capability of dealing with environmental legislation which has been transposed either by this or the previous administration. We have an obligation to perform our obligations and of course it is a presumption that the Environmental Agency and the competent authority will at least comply with its obligations. The other points raised by hon Members on the need to transpose this and so on, the Opposition spokesman for the Environment cited a section and said that in his view that meant that perhaps it did not affect Gibraltar, why the need to transpose it? He is certainly right that it will not affect Gibraltar, why the need to transpose it? He is certainly right that it will not affect the incinerator and I will go on to describe why but the need to transpose arises as the need to transpose arises in many other cases where Gibraltar is not going to be affected. Last year the hon Member will recall that we transposed a directive on large combustion plants, when there are none in Gibraltar and probably will never be any in Gibraltar. We had an obligation to transpose it and that is the straightjacket that we are in. It is not, as the Hon Mr Perez suggests that we have until the year 2000 to comply with this obligation. The year 2000 is mentioned in the directive in relation to a review of emission levels. The compliance date for this is as stated in Article 18 of the directive the 31st December 1996, and so this is a directive that we need to transpose and pass into Gibraltar legislation because the compliance date has passed.

Gibraltar and the Gibraltar Government are under pressure on the infraction front in relation to this directive and so there is a need to comply with this obligation and this is what we are seeking to do on this occasion. In relation to the effects in Gibraltar itself, the Ordinance applies to incineration plants in which specified hazardous waste is incinerated and specifically excludes municipal waste incinerators. Our incinerator in Gibraltar is only licensed for the incineration of municipal waste and is therefore excluded from the provisions of this Ordinance. Should the incinerator ever wish to incinerate any type of specified hazardous waste it would have to apply for a licence under this Ordinance and comply with the listed conditions under this section, design, considerations and so on. Furthermore, specified hazardous waste as defined in this Ordinance and in the directive is not ordinarily produced in Gibraltar since such waste generally results from the chemical and other manufacturing industries and as such would also be subject to the licensing requirements of the Trans-frontier Shipment of Waste Regulations on Importation. The only other type of refuse, apart from municipal waste which our incinerator sometimes handles is our animal carcasses or clinical waste which are also specifically excluded from the provisions of this Ordinance by section 6(3) which is a direct transposition of an article of the directive which excludes the burning of clinical waste and animal carcasses for municipal incinerators. In conclusion, Mr Speaker, it is the advice received by the Government that the requirements of this Ordinance have no practical implications for Gibraltar's incinerator and serve to do two things - one to perform our Community obligation to transpose this directive, and secondly, to prevent hazardous waste from ever being disposed of at our incinerator in the future should anyone ever attempt to do such a thing. In any event, I am led to understand that our incinerator is not at present equipped to carry out this type of operation even if it wanted to do so without a licence and adaptation costs would be high. Mr Speaker, I think I have dealt with all the points made by hon Members.

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 or at a later stage in the meeting.

Question put. Agreed to.

THE PUBLIC HEALTH ORDINANCE (AMENDMENT) ORDINANCE 1998

HON K AZOPARDI:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar Council Directive 94/67/EC on the incineration of hazardous waste 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. I have said all I have to say on the specific transposition of the directive in my previous intervention and as I indicated the purpose of this Ordinance is to insert provisions to ensure that specified hazardous waste shall only be incinerated in accordance with the provisions of the Specified Hazardous Waste (Incineration Plants) Ordinance 1998 and to avoid the Public Health Ordinance being cluttered up in an unhelpful fashion. 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 or at a later stage in the meeting.

Question put. Agreed to.

THE REVISED EDITION OF THE LAWS ORDINANCE 1998

HON ATTORNEY-GENERAL:

I have the honour to move that a Bill for an Ordinance to authorise the preparation of revised editions of the statute laws of Gibraltar and to provide for a continuing process of revision and consolidation of such laws be read a first time.

Question put. Agreed to.

SECOND READING

HON ATTORNEY-GENERAL:

I have the honour to move that the Bill be now read a second time. Mr Speaker, anyone who has practised law in the Courts of Gibraltar, and I think that includes a number of people I see here, cannot really fail to welcome the publication of a revised edition of the laws. I think people who have practised in the courts will remember the horror of going into Court with an edition of the Laws of Gibraltar that had bits of yellow stick-on most of the pages, paragraphs stapled in and crossings out done in handwriting. One always went in with a prayer that the person who had done the crossing out had not had too good a night the night before and had in fact crossed out the right bits. Not always a prayer gave results. One also had the problem that it could well be that the bit that was stapled on had in fact come off and at the critical moment was not available. In fact, before I came in Mr Speaker, I looked at one of the Ordinances in common use, the Imports and Exports Ordinance and that particular Ordinance almost has more bits of stick-on than the original Ordinance. That is not the end of the horror story and Mr Speaker, in your previous incarnation, you must have come across this, a situation where in Court two Counsels and a Judge each of whom might be referring to a text that was not the same. Worst of all, none of the text that they were referring to might be up to date. I am told that the most up to date edition of the revised laws is in my Chamber and I hate to say it but I am afraid to say that is not totally up to date. The practice of law, of course, demands a degree of certainty and any client going to a lawyer expects that when the lawyer gives them advice the text that

the lawyer refers to is the same text that any other practitioner would refer to in advising the other side to the dispute and the same text that a judge in due course would refer to in deciding the issue. Mr Speaker, at the moment one cannot be sure of that. The Revised Edition of the Laws Bill is hoped to deal with that. The reason why legislation is needed is because under the current revised edition there is only the power to issue one annual supplement a year. There is not the power to issue a new revised edition and of course what has happened is that over the years my instructions are that only one such annual supplement has ever been produced and that now means that in order to catch up in the fall back that has occurred over the years, under the current law one could only deal with that by issuing one annual supplement. Really that would be such a mammoth task that it would be beyond the resources available to us and also were it to be done it would be completely indigestible. Mr Speaker, the new Ordinance allows for more than one supplement a year to be produced and the plan is that before the first Revised Edition is published, the new Revised Edition, supplements will be published. I know that already those supplements are under preparation and a fairly substantial number of topics have already been dealt with. The idea is that supplements will be published but in due course these supplements will be combined into a revised edition. Clearly, one would then follow that with further supplements and with the power in due course, if and when necessary to issue further revised editions. As far as the format of the revised laws go there has been a fairly wide process of consultation and a format is being settled on at the moment that allows one to identify the amendment itself and the source from whence it came. That format is not set in stone, there is a degree of flexibility and if necessary it could be changed. I commend the Bill to the House.

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

HON A ISOLA:

Mr Speaker, as the hon the Attorney-General has said, it has been difficult for practitioners to work with Ordinances that have bits and pieces stuck in. It certainly will be welcomed by all lawyers in Gibraltar or anybody that needs to look at the laws.

The Bill is, with one or two minor changes, identical in the terms of the previous 1981 Ordinance, so we have no difficulty in supporting the Bill. The only question of a practical nature I would ask as a practitioner is, will the laws, once prepared, be available in a computerised form, CD-ROM or discs which may be easier for the practitioners to work with?

HON CHIEF MINISTER:

Mr Speaker, Opposition Members who were in the House before May 1996, will remember that the state of the Laws of Gibraltar is an issue that we gave considerable importance to when we were on the Opposition benches precisely for the reasons that the hon Attorney-General has highlighted. It is therefore a matter of considerable satisfaction to the Government that we have been able to dedicate the priority that we believed the matter deserved. It has taken longer than I would have liked. The Bill before the House is just the enabling statutory mechanism but of course much thought has gone into the mechanics and it raises questions about computerisation, the mechanics about how the laws are going to be not just consolidated, not how the consolidation exercise is going to take place physically but indeed how the laws are going to be managed thereafter to avoid them ever falling into a state of disrepair again, what resources will be necessary for that, what expertise will be necessary for that, and of course hon Members will have noticed by now that the Government have established a Legislation Support Unit which is a dedicated and focused resource in dealing with the management of legislation and the management of the laws. There has been a very wide process of consultation. I am sure that the hon Member in his private professional capacity will have seen in his Chambers a lengthy consultation document which we prepared setting out what the Government wanted to achieve in this project and indeed what the various options were for the different forms of consolidation that were possible and that there was a review in the consultation paper of the various ways in which such exercise had taken place in various common law countries, some in the Caribbean, some in Africa and some in, for example, Australia and New Zealand. Having considered the views of the Judiciary and the views of the private practitioners and indeed the views of the Attorney-General, we have opted for a

particular presentational method for the consolidated version and that is now being worked on. I can tell the hon Member that when I last looked, I think something like 23 or 24, it may be more by now, Ordinances had been consolidated. It is now a matter of time of how and when those are published and whether they are published in dribs and drabs. The matter is being dealt with alphabetically and already there is a large measure of progress in the actual consolidation under subject matter. The Government are resourcing the Legislation Support Unit precisely so that it should be able to produce not just an efficient paper management of the laws, in other words loose leafs amending pages which then get substituted but actually a computerised version. That the laws of Gibraltar should be available on CD-ROM and that whenever an amendment is done the amendment is reflected in the information technology version of the laws and that this CD-ROM should not only be available but indeed should be networked so that courts, lawyers, Government Departments, private citizens, anybody can at any time draw from a Government-managed net an authoritative textual version of what the Laws of Gibraltar are. That is a phase two, it is not strictly part of the initial consolidation process but just to give hon Members an overview of the length and breadth of the Government's determination, not just to put the Laws of Gibraltar in a working condition but secondly to ensure that they stay in an up to date working condition and thereafter to try and put the accessibility of the Laws of Gibraltar for all its uses into the 21st century in terms of availability on the various information technology media that exist for that purpose. I know that Opposition Members support that and their support is very welcome.

Question put. Agreed to.

The Bill was read a second time.

HON ATTORNEY-GENERAL:

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

Question put. Agreed to.

THE LICENSING AND FEES (AMENDMENT) ORDINANCE 1998

HON ATTORNEY-GENERAL:

I have the honour to move that a Bill for an Ordinance to amend the Licensing and Fees Ordinance so as to enable fees to be levied in respect of reports by the Police on road traffic accidents and complaints of crime be read a first time.

Question put. Agreed to.

SECOND READING

HON ATTORNEY-GENERAL:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this short piece of legislation simply brings procedures in Gibraltar into line with procedures in the United Kingdom and in certain other jurisdictions. It is standard practice in the United Kingdom that the police should cover their expenses in the preparation of documents for use in proceedings other than criminal proceedings. This Bill deals with the preparation of documents for the use in civil proceedings. It relates to road traffic accidents and it relates to complaints about the commission of crime and effectively the people who will wish these sorts of documents will be insurance companies and loss surveyors and of course, Mr Speaker, these are not charitable organisations. They exist to make a profit and it is felt that it is not right that the police and eventually the tax payer should subsidise these organisations by providing the sort of documentation referred to free. Mr Speaker, there is no question of charges being made in respect of dockets for normal criminal proceedings. At the moment there is a nominal charge and there is no intent that that should be increased. This Bill applies solely to documentation for use in civil actions. I commend the Bill to the House.

HON A ISOLA:

Mr Speaker, it relates to complaints of crime, obviously that excludes criminal offences as such in terms of a normal prosecution by the police?

HON ATTORNEY-GENERAL:

Mr Speaker, there is no intention that this legislation affects in any way the right of an accused person to have a docket of evidence served upon him. It will only relate when in civil proceedings it is desired to use evidence that has been gathered in criminal proceedings. The standard thing is a loss adjustment claim perhaps after a burglary, a civil claim after a road traffic accident. It will not affect the normal criminal processes in the court in any way.

HON A ISOLA:

Mr Speaker, complaints of crime surely covers criminal offences?

HON CHIEF MINISTER:

The only point, Mr Speaker, is that there is no increase in the charge scheduled for the production of a docket to the defendant. The amount has not been increased for that.

HON A ISOLA:

I was not aware that there had actually been a provision within the... I know there is an administrative charge of £3 or £5 for a docket in the Magistrates' Court and in the Supreme Court but I am not aware that there is actually a provision within the Ordinance enabling that charge to be made. Therefore, I had assumed because this relates to traffic accidents and complaints of crime that in fact that bracket was also being brought to this in respect of offences. The Attorney-General has said that in fact it will not be applied to them but I do not see where that legal basis for that statement is being made. Is it a discretionary thing where the police will say, "No, it is criminal and we will not bother charging." Because the law, as far as I can read it, prosecution documents of 25 pages is £10 and it relates to complaints of crime.

HON CHIEF MINISTER:

Can we leave it at this? We will look at the point that the hon Member makes in connection for the Committee Stage and we will give them a full

explanation and we will deal with it then. This is really a point of detail and rather than keep the House waiting now I will look at it and will raise it in a few moments or this afternoon.

HON A ISOLA:

Mr Speaker, the only thing that hinges on that is that obviously we will accept the intention, that this does not apply to normal people accused in the Magistrates' Court or Supreme Court in respect of complaints of crime and so to that extent we support it where it affects commercial companies but were it to transpire that in fact this will apply across the board we would not support it so we will take it on the state of intention and we will support it on that basis.

HON CHIEF MINISTER:

As the Attorney-General has said there are no circumstances in which the Government will accept a position in which people have to pay anything other than the existing nominal for access to documents that they need to defend themselves from a criminal charge. That is not the intention and if by some error we found that we had legislated to that effect, which we do not think we are doing, but even if it slipped us all at the Committee Stage, the Opposition Members can certainly have my assurance that we would introduce legislation to repeal it forthwith.

HON ATTORNEY-GENERAL:

Mr Speaker, certainly as far as I am concerned the undertaking is that this will only be used in civil proceedings. I think one can go further and say that as a matter of law there is a very small nominal charge at the moment for dockets but as a matter of law a defendant has a right to disclosure not only of the docket but of any unused material that is relevant or possibly relevant to his case. If the Crown in some way tried to ensure that he did not have that, unless he paid a substantial sum, the Courts would simply strike it down, it would be totally contrary to law and the laws on disclosure. It is a fundamental right that any defendant is provided by the Crown with all the documents that are going to be used in his prosecution and any other documents generated by the Crown that are

relevant or possibly relevant. Mr Speaker, this legislation could not be used for that purpose.

Question put. Agreed to.

The Bill was read a second time.

HON ATTORNEY-GENERAL:

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

Question put. Agreed to.

PRIVATE MEMBER'S BILL

FIRST AND SECOND READINGS

THE ABN AMRO BANK ORDINANCE 1998

HON P C MONTEGRIFFO:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the Private Member's Bill.

Question put. Agreed to.

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to make provision for and in connection with the transfer of the business of ABN AMRO Bank (Gibraltar) Limited to a branch of ABN AMRO Bank N.V. be read a first time.

Question put. Agreed to.

SECOND READING

HON P C MONTEGRIFFO:

I have the honour to move that the Bill be read a second time. Mr Speaker, the Bill has been presented to the House to ensure the smooth transfer by ABN Bank Gibraltar Limited of its business to a branch of its parent ABN Bank NV. As in the case of a similar Bill brought to the House recently in respect of another bank this legislation is necessary because the business of the bank is being

transferred to another corporate entity. The reason for the Bill is that the parent's policy is to operate through branches throughout the world. These branches give more security to bank customers since the entire assets of the bank are there to answer the bank's customers and depositors. Similar transfers of business have recently taken place in Belgium and Austria. Section 2 is the fundamental section of the Bill, transferring the undertaking of the Gibraltar Bank to its parents. The transfer is to take effect on the 1st August this year. Section 3 spells out the basic provisions, transferring property from the Gibraltar bank to its parent. Property is defined very widely to include all assets and liabilities. The rights of third parties in property transferred are preserved by the section and continue as if the two banks were one in law. Section 4 is also an important section in that it excludes certain property from the transfer whilst section 5 ensures that the employees' pension rights are preserved in the new arrangements. I should add, Mr Speaker, that as far as the employees are concerned there has of course been full consultation with the employees and that they are happy with the new arrangements that the new bank will introduce. Section 10 provides for the eventual winding up of the Gibraltar bank on a date to be fixed by the Minister for Trade and Industry by notice in the Gazette. I commend the Bill to the House.

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

HON A ISOLA:

Mr Speaker, we will be supporting this Bill. We have in fact received two Bills with two different numbers. I am not sure which one is the one we are dealing with or if there is any difference?

HON P C MONTEGRIFFO:

The reason for that, Mr Speaker, is that as a Private Member's Bill the requirements of Standing Orders necessitate the publication twice in the Gazette, of the same Bill. The House might recall that this issue did arise in the context of the previous Bill that I referred to and we agreed to suspend that particular Standing Order at the time.

HON A ISOLA:

I am grateful for that, Mr Speaker. Whereas in this case it is slightly different from the last one that we passed through the House with the other bank in that obviously the other bank was a non-EU parent, in the Isle of Man I recall, and a licence was obtained in Gibraltar. This case is one of obviously passporting in and therefore I assume that the deposit protection scheme would apply in Holland where the parent bank is and not in Gibraltar where the head licence would be. I would just ask, Mr Speaker, I think the Minister has clarified a number of the points that we were going to raise, are Government aware of whether any other banks will be following a similar route and becoming branches? If so, what would the impact be on the Gibraltar Deposit Protection Scheme because obviously I assume when the Ordinance has gone through, the basis of contribution of each bank is based on all the different banks together with the level of business that they would have and therefore, what impact will it have with this and possibly other banks coming through in future pulling out and therefore dropping the reserves that the Deposit Protection Scheme have available because I assume it is calculated on the basis of how many banks and what reserves they have?

HON P C MONTEGRIFFO:

I am grateful for the hon Members' support. The parent will indeed be based in the jurisdiction which will now be the one where the appropriate Deposit Protection Scheme applies. So, future depositors of this Bank will have their deposits guaranteed under the Dutch scheme rather than the Gibraltar scheme. We are not aware of any other bank that is proposing to go down this route. We were aware of this particular proposal when the last Bill was brought to the House. They were the only two the Government have been approached on and yes, the matter raised by the hon Member is a valid issue. He is right, Mr Speaker, in highlighting that the Gibraltar Deposit Scheme works for Gibraltar licensed banks and would therefore depend on the number of players falling into that category from time to time. It is, of course, an unfunded scheme, let us be clear about that. There is no suggestion that the Deposit Guarantee Scheme will acutely involve any of the banks that are licensed in Gibraltar actually contributing money to a fund

which will lie there as an emergency pot. It is only a contingent liability that Gibraltar banks will have but nonetheless in theory the smaller the pool of Gibraltar licensed banks the higher the risk individually to each of those constituent members of the degree of exposure although of course by definition if there are less banks as well there is less exposure to cover. There should be a corresponding reduction in exposure. We have no further information of any other bank wishing to do this. This arises very similar to those of the other bank that we legislated on. It is entirely in accordance with a policy in this case of the bank rather than anything that has anything to do with Gibraltar or with the Deposit Scheme.

Question put. Agreed to.

HON P C MONTEGRIFFO:

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

Question put. Agreed to.

The House recessed at 1.05 pm.

The House resumed at 3.00 pm.

COMMITTEE STAGE

HON CHIEF MINISTER:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to enable the House to consider various Bills in Committee Stage.

Question put. Agreed to.

HON ATTORNEY-GENERAL:

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

(1) The Tobacco Ordinance 1997 (Amendment) Bill 1998.

(2) The Companies Ordinance (Amendment) Bill 1998.

(3) The Companies (Amendment) Bill 1998.

(4) The Auditors Approval and Registration Bill 1998.

(5) The Disclosure of Interests in Shares Bill 1998.

(6) The Insider Dealing Bill 1998.

(7) The Listing of Securities Bill 1998.

(8) The Prospectuses Bill 1998.

(9) The Traffic Ordinance (Amendment)(No. 2) Bill 1998.

(10) The Licensing and Fees Ordinance (Amendment) Bill 1998.

(11) The Social Security (Closed Long Term Benefits and Scheme) Ordinance 1996 (Amendment) Bill 1998.

(12) The Unfair Terms in Consumer Contracts Bill.

(13) The Medical and Health (Amendment) Bill 1998.

(14) The Specified Hazardous Waste (Incineration Plants) Bill 1998.

(15) The Public Health Ordinance (Amendment) Bill 1998.

(16) The Revised Edition of the Laws Bill 1998.

(17) The Licensing and Fees (Amendment) Bill 1998.

(18) The ABN AMRO Bank Bill 1998.

HON CHIEF MINISTER:

Mr Chairman, the Minister for Trade and Industry is not going to proceed with the Committee Stage of the Insider Dealing Bill 1998 because he is not yet ready to respond to the points raised by the Hon Mr Isola and as that one is not of desperate urgency it can stay over until the next sitting.

THE TOBACCO ORDINANCE 1997 (AMENDMENT) BILL 1998

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

New Clause 3

HON CHIEF MINISTER:

Mr Chairman, I have given notice of the addition of a new clause 3 to the Bill to amend two sections of the existing Ordinance. The first is the one which hon Members have already had notice before we began the debate and that is in section 9 of the Tobacco Ordinance, the substitution in sub-sections (1), (3) and (5), the existing word is "tobacco", it should now read "cigarettes" and that will have the effect of restricting the need for an Import Permit for cigarettes.

Certainly it would have been much more elegant to have used consistent language even though the meaning might be the same in the context and that the use of the word "cigarettes" would have been linguistically more consistent with the context than the word "tobacco" and therefore there is that second limb of the new clause 3 which is to amend section 13 to substitute in sub-section (3) for the word "tobacco" the word "cigarettes".

New clause 3 was agreed to and stood part of the Bill.

Clause 4

HON CHIEF MINISTER:

Mr Chairman, the existing clause 3 should now be renumbered as clause 4.

Clause 4, as amended, was agreed to and stood part of the Bill.

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

THE COMPANIES ORDINANCE (AMENDMENT) BILL 1998

Clauses 1 to 3 and the Long Title

Question put. The House voted.

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

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

Absent from the Chamber: The Hon Lt-Col E M Britto

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

THE AUDITORS APPROVAL AND REGISTRTION BILL 1998

Clauses 1 and 2

Question put. The House voted.

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

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

Absent from the Chamber: The Hon Lt-Col E M Britto

Clauses 1 and 2 stood part of the Bill.

Clauses 3 and 4

HON J J BOSSANO:

Can I ask why it is that the Government wish the Auditors Registration Board effectively to come under the Financial Services Commission, especially as the Minister said in the general principles of an earlier Bill that had they been in Government they would not have agreed to the composition of the Financial Services Commission which is composed of UK appointees in the majority and of course the Commissioner himself is a UK appointment. The Auditors are a defined domestic matter and I cannot understand why they want the Commissioner to be the person that appoints people to the Board or why the fees of the auditors should be going to the Commission. Surely, the auditors do a job which is not necessarily a matter related to the work of people who hold licences under the Financial Services Commission that is to say, one can be an auditor without being involved in financial services. We see absolutely no requirement for this to be done and we see absolutely no reason notwithstanding the other changes for the registration of the auditors to be taken away from the Government and given to the Commission.

HON P C MONTEGRIFFO:

Mr Chairman, the position of the Commissioner in this Ordinance replicates entirely the position of the Commissioner under the existing Auditors Registration Ordinance. There is nothing that the Commissioner does in the new Ordinance that is not the position in the old Ordinance and the view we took, Mr Chairman, is that the priority was to transpose the directive and we did not give great priority to undoing the reference to Commissioner and introducing somebody else but I can also indicate to the hon Member, if he is interested, is to ensure that matters of Gibraltar Government competence are really kept within the Gibraltar Government but in fact the new Ordinance does provide new powers for the Minister for Trade and Industry that did not exist in the 1983 Ordinance, specifically the power to make regulations pursuant to sub-sections (8) and (9) and quite significantly, the powers to prescribe fees, which under the

previous Ordinance was with the Governor, are now powers dedicated to the Minister.

Question put. The House voted.

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

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

Absent from the Chamber: The Hon Lt-Col E M Britto

Clauses 3 and 4 stood part of the Bill.

Clause 5

HON A ISOLA:

Mr Chairman, in clause 5 we get to part 5(1)(c) which is the part that we spoke about in the general principles of the Bill where in part (a) of 5(1) it tells us what people under Part 1 can do, in part (b) it tells us what people under Part II, the firms, can do but in Part III it is silent. Would it not be clearer in respect of Part III if it said they could do anything else other than the matters in part (a)?

HON P C MONTEGRIFFO:

We addressed this point at the second reading. The view that Government take is that it would not make it clearer to go down the route that the hon Member is suggesting. The position is very clear, the position is that Part I Auditors are able to do the business outlined in 5(1)(a) and Part III Auditors are able to do the business as identified in section 124(1)(a) of the Companies Ordinance which will

provide that basically auditors entitled to carry out company audits are either I, II or III and that would only be conditioned by any other piece of legislation that then says in the case of statutory audits one requires specifically a Part I or a Part II. There is no lack of clarity whatsoever. The Part III Auditors are able to do everything by virtue of Section 124(1)(a) of the Companies Ordinance other than in those circumstances outlined now in section 5(1) of this particular Ordinance.

HON A ISOLA:

Mr Chairman, the reason for raising it again is because looking back to the Auditors Approval and Registration Regulation Ordinance 1992, there is no sub-statement in respect of either Part I or Part II whereas here for the first time it is saying Part I can do this, Part II can do that and Part III it just says who they are.

HON P C MONTEGRIFFO:

Mr Chairman, this is a natural consequence of the transposition. What the transposition is requiring us to do is to provide that for statutory audits, in other words, audits defined in Community Instruments as being audits that have to be done by a certain category of auditors, the provision has to make that only that category can do those audits. That did not exist in 1983 when the previous Ordinance was undertaken. Now we do have to define in this new legislation those auditors that can only do the work that those Community Instruments say require a statutory audit. Where a Community Instrument is silent on the question of a statutory audit or whether indeed it exempts the situation of a statutory audit then Part III auditors are able to audit such companies. I gave the example yesterday of small companies under the Fourth and Seventh Company Law Directive. Under these directives the audits required would be statutory audits but there is an exemption under those directives for small companies so Part III auditors would be able to undertake audits of small companies because they are not statutory audits as defined by Community Instrument. There is no requirement for them to be statutory audits defined by Community Instrument.

HON A ISOLA:

Why the reference to Auditors Registration Ordinance in part (c) it is there and in a number of other places throughout the Bill? That Ordinance then should be repealed and replaced by the Auditors Approval and Regulations Ordinance of 1992, I just wonder why there is reference to the Ordinance being repealed here.

HON P C MONTEGRIFFO:

Mr Chairman, as far as I am aware, what we are doing is bringing into Part III those auditors listed under the Auditors Registration Ordinance which is the one currently in force. I have before me the Ordinance currently in force which has been the subject of amendment, that is true to say, there have been amendments to the 1983 Ordinance so to speak, but the Ordinance in force is the Auditors Registration Ordinance 1983, with amendments, no doubt. I can assist the hon Member perhaps, in my note it makes reference to Ordinance 35 of 1992 as amending, for example, the definition of auditor. I had an amendment introduced in 1992 extending the definition of auditor to mean the auditor of a company registered under the Companies Ordinance or of a statutory body of the Government or a Government agency. That was one of the amendments introduced by Ordinance 35 of 1992. There are others jotted up in the particular principal Ordinance.

Question put. The House voted.

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

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

Absent from the Chamber: The Hon Lt-Col E M Britto

Clause 5 stood part of the Bill.

Clause 6

HON P C MONTEGRIFFO:

Mr Chairman, in the Title I have given notice of an amendment here, Part II of the Bill is currently headed "Statutory Auditors - Part 1 of the Register", in fact it just does not deal with Part 1 of the Register, it deals with other parts of the Register too. I have given notice to the House that this should now read "Statutory Auditors and the Register".

Question put. The House voted.

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

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

Absent from the Chamber: The Hon Lt-Col E M Britto

Clause 6, as amended, stood part of the Bill.

Clauses 7 to 16 and Schedule 1

Question put. The House voted.

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

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

Absent from the Chamber: The Hon Lt-Col E M Britto

Clauses 7 to 16 and Schedule 1 stood part of the Bill.

Schedule 2

HON P C MONTEGRIFFO:

Mr Chairman, as I indicated previously the current wording of paragraph 3 of Schedule 2 makes a reference to Parts I and II of the Register. I move that that be changed to Parts I, II or III of the Register.

Question put. The House voted.

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

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

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

Absent from the Chamber: The Hon Lt-Col E M Britto

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

The Long Title stood part of the Bill.

THE DISCLOSURE OF INTERESTS IN SHARES BILL 1998

Clauses 1 to 30 and the Long Title

Question put. The House voted.

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

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

Absent from the Chamber: The Hon Lt-Col E M Britto

Clauses 1 to 30 and the Long Title stood part of the Bill.

THE LISTING OF SECURITIES BILL 1998

Clauses 1 to 10 and the Long Title

Question put. The House voted.

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

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

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

Absent from the Chamber: The Hon Lt-Col E M Britto

Clauses 1 to 10 and the Long Title stood part of the Bill.

THE PROSPECTUSES BILL 1998

Clauses 1 to 15

Question put. The House voted.

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

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

Absent from the Chamber: The Hon Lt-Col E M Britto

Clauses 1 to 15 stood part of the Bill.

Clause 16

HON P C MONTEGRIFFO:

Mr Chairman, under Clause 16(4)(a) there is minor amendment by the introduction of the word "of" after the word "listing" in the reference to the Listing of Securities Ordinance 1998.

Question put. The House voted.

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

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

Absent from the Chamber: The Hon Lt-Col E M Britto

Clause 16, as amended, stood part of the Bill.

Clauses 17 and 18, Schedules 1 and 2 and the Long Title

Question put. The House voted.

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

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

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

Absent from the Chamber: The Hon Lt-Col E M Britto

Clauses 17 and 18, Schedules 1 and 2 and the Long Title stood part of the Bill.

THE TRAFFIC ORDINANCE (AMENDMENT)(NO 2) BILL 1998

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

Clause 2

HON J J HOLLIDAY:

Mr Chairman, I have given notice that I wish the Bill to be amended as follows: The reference to section 4 should be substituted by reference to Section 4(H) and the reference 4(A) that should be substituted by a reference to 4(I).

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 LICENSING AND FEES ORDINANCE (AMENDMENT) BILL 1998

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

THE SOCIAL SECURITY (CLOSED LONG TERM BENEFITS AND SCHEME) ORDINANCE 1996 (AMENDMENT) BILL 1998

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

Clause 2

HON H CORBY:

Mr Chairman, I move the following amendment: Clause 2(7)(a) should be deleted and substituted by the following new clause 2(7)(a) which reads: "Section 3(A) of the Social Insurance Ordinance, is a reference to the section 3(A) enacted under section 2 of the Social Insurance (Amendment) Ordinance 1973, and as amended from time to time".

Question put. Agreed to.

HON R MOR:

I have a further amendment, Mr Chairman. To change the date from the 31st July to the 31st August 1998 wherever this date appears throughout the Bill.

HON CHIEF MINISTER:

I do not know if the hon Member believes that there are still people coming forward. There are not, there is nobody that has come forward now for probably a month or longer. The problem is that very soon after the end of the deadline, 10 cases have come up. We know who the people are. Extending the deadline for the cut-off date is not going to let in anybody else that is waiting in the wings to be let off. There are 10 people, all of whom came to light very quickly after the end of the first deadline. The list has not grown now for nearly two months, nobody else has come forward and said, "Oh, I am sorry I got the thing in late". It really would serve no practical purpose.

HON R MOR:

Mr Chairman, if one were to follow the argument that the Chief Minister uses when he was saying that the idea of re-writing the whole exercise again was to give it as much wide publicity as possible, then it could well be the case that more people will now come forward, that is using the same argument.

HON CHIEF MINISTER:

I am glad that the hon Member enjoys these intellectual exchanges as well. The fact is that this Bill has had a lot of publicity already, it has been published in the Gazette. It has been reported in the press and no one has come forward. The whole purpose of extending the deadline is to let in people who qualify but have just applied too late. No one has come forward for the last two months. I think the Bill makes adequate provision but if the hon Member feels that he has contributed to anybody getting this right, at the end of the day the whole idea is to give maximum opportunity to qualify to people to benefit from this. We have no interest in bringing the axe down but for administrative reasons

there has to be a cut-off date. If the hon Member feels that he would like to give 60 days instead of 30 days extension for latecomers to come in, we will go along with that but I do assure him that the experience of the Department over the last two months is that there will be nobody else but of course it cuts both ways. On the basis of what I am saying it does no harm to extend it either. We are happy to accept that amendment.

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 UNFAIR TERMS IN CONSUMER CONTRACTS BILL

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

Clause 3

HON K AZOPARDI:

Mr Chairman, I would like to propose an amendment to clause 3 sub-clause (1) be amended by the deletion of the word "provision" and the substitution therefor of the word "provisions".

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

Clauses 4 to 6 were agreed to and stood part of the Bill.

Clause 7

HON K AZOPARDI:

Mr Chairman, if I can propose an amendment to that clause, the deletion of the word "the" appearing before the words "member State" and the substitution therefor of the word "a".

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

Clause 8

HON A ISOLA:

If I can just ask one question in respect of clause 8. I actually asked a question this morning and I forgot to remind the Minister that he had not answered it. In terms of the criteria, is there any criteria the Minister has in mind?

HON K AZOPARDI:

Obviously, we will have to consider the practicalities of the particular situation in Gibraltar. In the United Kingdom the criteria they would use is to perhaps designate people who are clearly identifiable consumer groups that have been around for some time. Here in Gibraltar it makes it more of a difficult exercise. I think we will have to devise our own criteria. What we were concerned is to put this Bill into place because of the pressure we were getting on the transposition and now we will have to consider formulating specific criteria to deal with that situation. In the light of the special circumstances of Gibraltar and the persons or organisation that could want to be designated, it may be that people may want to be designated on a case by case basis for particular interests. That may also be something we should, I think, look at.

Clause 8 was agreed to and stood part of the Bill.

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

Schedule 3

HON K AZOPARDI:

Mr Chairman, I have got two amendments here. The addition of the figure "1" in the margin prior to the words "Terms which have...". That would be numbered 1 for the whole section. Then in 2(c) of that same Schedule the deletion of the apostrophe and the letter "s" after "travellers".

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

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

THE MEDICAL AND HEALTH (AMENDMENT) BILL 1998

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

THE SPECIFIED HAZARDOUS WASTE (INCINERATION PLANTS) BILL 1998

Clauses 1 to 19, Schedules 1 to 4 and the Long Title were agreed to and stood part of the Bill.

THE PUBLIC HEALTH ORDINANCE (AMENDMENT) BILL 1998

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

THE REVISED EDITION OF THE LAWS BILL 1998

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

THE LICENSING AND FEES (AMENDMENT) BILL 1998

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

Clause 2

HON ATTORNEY-GENERAL:

Mr Chairman, I would move an amendment. This is not an amendment of which notice is being given but in fact deals with the points made by the hon Member. Mr Chairman, the amendment is in section, "13. Police Reports in respect of road traffic accidents and complaints of crime". The full stop should go, a comma should be inserted and the following words should be inserted, "otherwise than for use in criminal proceedings".

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 COMPANIES (AMENDMENT) BILL 1998

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

Clause 2

HON A ISOLA:

In section 2(1)(dd), the point I mentioned this morning, it is only "balance sheet or profit,", the directive says "balance sheet and". If we are trying to make it acceptable, I do not think for our purposes it makes any difference if we put "any balance sheet and" as opposed to "or" as "and" is the word used in the directive. I do not know whether that makes any difference to the amendment but the directive reads, "the balance sheet and the profit and loss account" for each financial year. We have put here "any balance sheet or".

Mr Chairman, I am just suggesting to the Minister that in section 2(1)(dd) put in the words, "any balance sheet or profit and loss account" and in the directive it reads "the balance sheet and the profit and loss account". Two things as opposed to one. If we are going to seek to comply with the directive it may be better if we just use the same words.

My colleague in the Opposition has explained to me that there is a difference in that the directive one thing is seeking the disclosure of the balance sheet and the profit and loss account whereas in the Ordinance, to which this will be going, it is a requirement to notify the publication of. I assume it will be either one or the other, whatever it receives. I shall leave it as it is.

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

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

HON P C MONTEGRIFFO:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the Committee Stage of a Private Member's Bill.

Question put. Agreed to.

THE ABN AMRO BANK BILL 1998

Clauses 1 to 11 and the Long Title were agreed to and stood part of the Bill.

THIRD READING

HON ATTORNEY-GENERAL:

Mr Chairman, I have the honour to report that:

The Tobacco Ordinance 1997 (Amendment) Bill 1998.
The Companies Ordinance (Amendment) Bill 1998.
The Companies (Amendment) Bill 1998.
The Auditors Approval and Registration Bill 1998.
The Disclosure of Interest in Shares Bill 1998.
The Listing of Securities Bill 1998.
The Prospectuses Bill 1998.
The Traffic Ordinance (Amendment)(No. 2) Bill 1998.
The Licensing and Fees Ordinance (Amendment) Bill 1998.
The Social Security (Closed Long Term Benefits and Scheme) Ordinance 1996 (Amendment) Bill 1998.
The Unfair Terms in Consumer Contracts Bill.
The Medical and Health (Amendment) Bill 1998.
The Specified Hazardous Waste (Incineration Plants) Bill 1998.
The Public Health Ordinance (Amendment) Bill 1998.
The Revised Edition of the Laws Bill 1998.
The Licensing and Fees (Amendment) Bill 1998.
The ABN AMRO Bank 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 Tobacco Ordinance 1997 (Amendment) Bill 1998; the Traffic Ordinance (Amendment)(No. 2) Bill 1998; The Licensing and Fees Ordinance (Amendment) Bill 1998; The Social Security (Closed Long Term Benefits and Scheme) Ordinance 1996 (Amendment) Bill 1998; The Unfair Terms in Consumer Contracts Bill; The Medical and Health (Amendment) Bill 1998; The Specified Hazardous Waste (Incineration Plants) Bill 1998; the Public Health Ordinance (Amendment) Bill 1998; The Revised Edition of the Laws Bill 1998; The Licensing and Fees (Amendment) Bill 1998 and The ABN AMRO Bank Bill 1998; were agreed to and read a third time and passed.

The Companies Ordinance (Amendment) Bill 1998; The Companies (Amendment) Bill 1998; The Auditors Approval and Registration Bill 1998; The Disclosure of Interests in Shares Bill 1998; The Listing of Securities Bill 1998; The Prospectuses Bill 1998.

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

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

Absent from the Chamber: The Hon Lt-Col E M Britto

The Bills were read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that this House do now adjourn to Monday 13th July 1998, at 3.00 pm.

Question put. Agreed to.

The adjournment of the House was taken at 4.15 pm on Friday 3rd July 1998.

MONDAY 13TH JULY 1998

The House resumed at 3.00 pm.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana 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 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 A J Isola
The Hon J J Gabay
The Hon R Mor
The Hon J C Perez

ABSENT:

The Hon Miss M I Montegriffo

IN ATTENDANCE:

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

BILLS

FIRST AND SECOND READINGS

HON J J HOLLIDAY:

I beg to give notice under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the Bill.

Question put. Agreed to.

THE TRANSPORT ORDINANCE 1998

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to amend and consolidate the law relating to public transport and road haulage: to make provision for the establishment of the Transport Commission: to make further provision for the regulation and licensing of services supplied to the tourism sector of the economy: and for matters connected thereto be read a first time.

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that the Bill for a Transport Ordinance be read a second time. Mr Speaker, this is a voluminous piece of legislation. In essence, it re-enacts with important amendments and additions provisions currently found in the Traffic Ordinance which impact on transport matters. They include the provisions in the old Traffic Ordinance which govern the regulation and licensing of taxis, omnibuses, lorries, horse-drawn vehicles, self-drive hire cars and road haulage contractors. Provision is made for extending the licensing and regulation of private hire cars under the category of chauffeurs and chauffeur-driven hire cars.

Government perceived that there was a need to extend existing legislation in the field of transport following the inability to arrive at a Memorandum of Understanding with the providers of public transport for the regulation of all matters which relate to transport in the field of tourism. Government consider it important to do away with outmoded practices and to open up the field of tourism transportation to allow customers a meaningful

freedom of choice in order to encourage the growth of Gibraltar as a centre of tourism excellence and to develop Gibraltar's potential as a cruise port of call. At the same time, Government recognise that the transport industry in Gibraltar has legitimate commercial rights and expectations and this is reflected in the Bill before this House. The bottom line nevertheless has to be that quality services need to be available, that the range of Gibraltar's tourist product should not be undersold and that there should be an end to unfair commercial practices. Tourism provides jobs for Gibraltarians and any practice that reduces Gibraltar's tourism potential puts jobs at risk. Government will not permit this. The role of the Government under the new legislation will be to control and supervise the manner in which transportation is provided and to ensure high standards are maintained in all areas which impact on transportation and public transport, whilst at the same time ensuring that dominant positions are not used to destabilise any sector of the transport industry. Advantage is taken of this exercise to consolidate all existing transport legislation, particularly in relation to road haulage and to make it available in a more readily accessible format. Mr Speaker, allow me to go through the Bill and highlight some of the features which are important to Government.

Part I essentially contains definitions. At this point, Mr Speaker, I wish to give notice that I will seek at Committee Stage to correct the definition at section 2(1) of the different categories of motor vehicles. These are amended late in 1997 and are a result of a clerical error. The former definitions were included in this Bill.

Part II establishes the Transport Commission and Transport Inspectors. The Transport Commission does not replace the Traffic Commission, there is a continuing role for the Traffic Commission. What this part of the Bill seeks to do is to focus the responsibilities of the Transport Commission. The Traffic Commission will continue to deal with all matters which appertain to traffic. The Transport Commission will have the functions prescribed by section 4 of the Bill. These are matters which relate to transport.

Mr Speaker, I would particularly like to pay tribute to Mr Brian Clark who has been a member and lately Chairman of the Traffic Commission for many years. I would like to thank him and members of the Traffic Commission who have worked with dedication over many year. The members

of the Traffic Commission are not paid for their duties and they always give freely of their time for the good of the community. Theirs is sometimes a thankless task. However, their sterling work ought to be and it is hereby publicly recognised.

I will now turn to the Transport Commission. The most significant change in the composition of the Transport Commission when compared with that of the existing Traffic Commission is that the Chairman will be the Minister with responsibility for Transport. The Government have been unhappy for some time that there should be a statutory body, the Traffic Commission, whose decisions can bind Government and who can take decisions without a Government steer. These decisions could even be taken to further a strategy or policy which is contrary to Government wishes and this is unacceptable. This matter has now been set right insofar as the Transport Commission is concerned.

The powers of the Transport Commission are similar to the existing powers of the Traffic Commission and reflect section 55A of the Traffic Ordinance. Section 6 simply makes provisions for matters consequential on the removal of responsibilities from the Traffic Commission to ensure that there is continuity in respect of matters which were before the Traffic Commission on the date of the commencement of the Transport Ordinance and which subsequently falls under the preview of the Transport Commission. Section 7 contains another innovation - the provision of Transport Inspectors. These inspectors will be crucial for ensuring that standards are maintained. On the one hand there needs to be legislative authority for inspections. Equally important is that the authority should be converted into effective policing. Transport Inspectors will enforce compliance with the terms of issue of licences, the quality of services offered to the public and the condition of vehicles. They will have extensive powers of examination of vehicles and enforcement, including the temporary suspension of licences but they will not be able to revoke licences.

Part III of the Bill deals with public service vehicles generally. Sections 8 to 10 are general clauses which apply to all public service vehicles. Sections 11 to 24 contain specific provisions in respect of taxis. Sections 25 to 43 contain specific provisions for buses and lorries. Provision for horse-drawn vehicles is contained in Sections 44 and 45 and for self-drive hire cars in Sections 46 to 50. This Part concludes with

sections 51 to 56 in respect of chauffeur-driven cars which include private hire cars.

Allow me now to expand on Part III. Sections 8 to 10 contain provisions which were not in the Traffic Ordinance. They reflect the need for certificates of fitness for public service vehicles. This will ensure that minimum standards are maintained in respect of all public service vehicles. The Government believe that the general public and visitors to Gibraltar should be able to expect a proper standard in respect of all public service vehicles. This is not to say that no vehicles are presently up to standard. These sections merely provide the mechanism to raise standards of those vehicles that are presently unacceptable. Section 8(6) makes it an offence for a public service vehicle to be used if it is not up to scratch and a certificate of fitness or authority for operating as a public service vehicle has been suspended. Naturally, there is a mechanism for appeal to the Magistrates' Court by anyone who feels aggrieved in respect of a decision of a Transport Inspector who suspends a certificate of fitness or an authority for operation of a public service vehicle.

Section 9 is, to my mind important. A public service vehicle may be in excellent condition when it is examined and a certificate of fitness issued. The validity of such a certificate is for one year. At some stage during the course of the year the vehicle may develop a fault or may no longer comply with the conditions which are required for the grant of a certificate of fitness. Section 9 allows for a Transport Inspector to ensure that a public service vehicle is re-examined at any time provided that the inspector has reasonable grounds to believe that the re-examination is justified. This is a safety measure as well as one which will improve matters. The Government are keen to ensure that safety standards are not only maintained but enhanced.

Section 10 empowers the Traffic Commission to add a rider to the public service licence to ensure that the public is properly served at all times. This is particularly important in respect of taxis. There are complaints which have often been voiced by the general public that there are no taxis available for a city service on certain occasions, especially when two cruise liners are in port at the same time. This section will allow the Transport Commission to direct on specific days and times that taxis will be made available to ensure that the needs of the general public and of visitors arriving are

properly serviced. Mr Speaker, this section is not intended as a weapon with which to bash taxi drivers, nor should it be construed as such. The taxi service needs to provide for the demand made on it by different sectors of the market. The size of Gibraltar and its population indicates that there should be 30 taxi licences. There are, in fact, 112 current licences. A mechanism will need to be put in place to ensure that approximately 30 taxis are earmarked at any one time for services other than Rock tours. It would be wrong to give the impression that the Taxi Association does not already make provision for a city service. This has been in existence for a number of years. However, what is now thought, is for the Transport Commission to regulate the manner in which this service is provided by limiting the activities that taxis may carry out on specific days and times.

I will now turn to the specific sections which deal with taxi road service licences. These are contained in Sections 11 to 24 and substantially re-enact provisions to the existing Traffic Ordinance. I wish to comment first on section 11 which deals with the issue of a road service licence when read together with section 8 which provides for the issue of certificates of fitness for public service vehicles. Mr Speaker, the intention is that both the road service licence and the certificate of fitness should be issued simultaneously as a result of a single application. This is obviously an issue for the Transport Regulations which will follow once the Transport Ordinance is in place in the statute books and for administrative procedures which are to be put in place. What I would like to emphasise at this point is that the Government do not wish to create administrative monsters, rather than to simplify procedures as much as possible whilst not compromising on standards and safety.

Section 17 introduces a new measure in respect of taxi licences which were first issued after the commencement date of the Transport Ordinance. This provides that only the registered owner of a taxi may operate a taxi. For the future, therefore, once the current generation of taxi licences are spent, there will be a new regime. This section reads together with section 23 on transferability of licences and will service to usher in a new climate. I would nevertheless like to highlight that existing taxi licences will continue to be renewed on the terms under which they were originally issued. I am aware that members of the Gibraltar Taxi Association are concerned that the provisions of sub-section 17(5) make it appear that as a result of sub-section 17(3) that

only existing licence holders will be subjected to restriction on their road service licence to provide, for example, for a city service for taxis. I therefore welcome the opportunity to clarify that section 17(5) applies only to existing licence holders and a parallel provision contained in section 10 implements a similar restriction for holders of new road licences if and when they are issued. This means that there will be a level-playing field and all road service licence holders will be subjected to the same restrictions on their licences. Sub-sections 17(8) and 17(9) contain new provisions, that only fit and proper persons who have no employment other than that of taxi driver may be granted a road service licence or be classified as a named driver for an existing road service licence.

Section 18 substantially re-enacts the provisions of section 66 of the Traffic Ordinance but hones down the condition when a vehicle can be licensed as a concessioned taxi. This concession is intended to apply for the future in respect of taxis which need to undergo extensive repairs. Formerly, vehicles could be licenced as concession taxis if the taxi driver was ill or absent from Gibraltar on holiday. The Government do not consider these as sufficient grounds for allowing a vehicle to be licenced as a concessioned taxi for the future. There is a further matter which arises in respect of the concessioned taxi. Further to the publication of this Bill, Government have decided that the provisions of the old section 66 of the Traffic Ordinance discriminates unnecessarily between vehicles licenced as taxis which were imported into Gibraltar free of import duty and those taxis upon which import duty has been paid. The benefit of section 18 of the Bill only extends to duty-free taxis, and the Government believe that they should be available to all vehicles which are licenced as taxis. I will therefore be seeking to amend this section accordingly at Committee Stage.

Section 20 provides two new grounds for which a road service licence can be revoked or suspended. They are section 20(1)(a) and (d). The first of the new grounds follows from the grant of certificates of fitness and roadworthiness which were not covered by the old Traffic Ordinance. The grounds of sub-section (d) are totally new. It is quite unacceptable for Government that an operator or a driver of a public service vehicle should use his vehicle as an obstacle on the public highway in order to further a grievance or dispute. If there is unhappiness with regard to any area that impacts on the provision of services by public service vehicles, this

should be resolved through dialogue. If dialogue does not achieve results it is up to the persons concerned to consider whether they wish to withhold their labour. What cannot be allowed is for an individual or a group of individuals to take the law into their own hands and create major disruptions through road blockages. If this is attempted for the future the persons involved may have their road service licences or operator licence revoked or suspended by the Traffic Commission.

Section 23 deals with the transfer of road service licences. At sub-section 23(1) it is now provided that licences first issued after the Transport Ordinance comes into effect shall not be transferable. Previously this was a permissive section. Section 23(2) refers to licences which were first issued prior to 1st November 1990. The significance of this date is that provisions were added to the Traffic Ordinance by the previous administration which made licences non-transferable on or after that date.

Mr Speaker, the main body of Part III relates to Operator Licences for buses and lorries. Many of the sections which refer to buses are the mirror image of similar provisions which relate to taxis. Once again most of the provisions of this element of Part III are a re-enactment of provisions which are currently found in the Traffic Ordinance. I only wish to highlight the provisions of section 43. This now provides that the Minister for Transport may determine the maximum number of operator licences that may be granted for any type or type of public service vehicles. This reflects the provisions of section 14 of the Bill now before the House, which in turn mirrors section 62 of the old Traffic Ordinance. I consider it anomalous that there should be a mechanism for setting a ceiling on the number of road service licences that can be issued and not allowing for the setting of a similar ceiling for operator licences for buses, or indeed, for chauffeur-driven hire cars. This omission is now being set right.

The provisions of Part III which relate to horse-drawn vehicles continue unchanged from the Old Traffic Ordinance. In so far as self-drive hire cars are concerned, there are significant changes to the former section 77 of the Traffic Ordinance which are incorporated into section 46 of the Bill. Sub-section 46(3) grants the Transport Commission discretion to grant, renew, refuse, revoke or suspend self-drive operator licences. This is an extension of the powers which were formerly provided under section 77 of the old

Traffic Ordinance. Section 46(4) provides that the minimum number of cars which should be available for hire by a care hire firm will be prescribed by notice in the Gazette. Previously, this number was prescribed in the Traffic Ordinance which makes it unwieldy in case amendments to these numbers become necessary in the light of unchanged circumstances. Section 49 now provides that self-drive operator licences shall not be transferable. The opposite was previously the case. There is no reason why this licence should be transferable. The other innovation of note in connection with hire cars is that Section 50(2) which now provides that self-drive cars need to have roadworthiness certificates and certificates of fitness. Again, this is a safety matter. Part III concludes with a totally new section on chauffeur licences. The Public Service Vehicles Regulations previously provided for private hire cars but this concept was not reflected by the Traffic Ordinance - the principal Ordinance from which PSV Regulations stem. This anomaly is now corrected.

Section 51 to 56 are therefore totally new provisions which cover, in addition to private hire cars, the concept of chauffeur-driven limousines, offering another range of public service vehicles. The regime for the issue of chauffeur licences is clearly set out and it is highlighted that the controls are only in respect of chauffeurs who offer their services for hire or reward and not for persons who are employed by private individuals as their personal chauffeurs. Essentially, the conditions which govern the issue of licences for chauffeurs or chauffeur-driven limousines mirror that as already applied in respect of other categories of public service vehicles.

Mr Speaker, Part IV of the Bill covers community authorisation and is a transposition of sections 83(a) to 83(k) of the Traffic Ordinance. The final provisions are contained in Part IV of the Bill in Sections 67 to 77. There are a number of new provisions contained in this Part. Section 67 provides a vehicle for appeal in certain matters on a point of law to a Judge of the Supreme Court. Regulation 67 sets out the new catalogue of measures in respect of which the minister for Transport may make Regulations for the purpose of carrying the Transport Ordinance into effect. Many of these matters were previously prescribed by the Traffic Ordinance. I would like to highlight a couple of new matters, Mr Speaker. These include sub-sections (n), (o), (p), (q), and (r). They are particularly designed to assist in cementing a better image for Gibraltar as a

tourism centre. The licensing of guides was previously a matter provided for in the Licensing of Tour Guides Rules 1989. As drivers of public service vehicles can also be licenced as guides, it would make more sense if these provisions in this area should be contained in the Transport Ordinance and Regulations. I am particularly interested in the introduction of a code of dress for licence holders of all descriptions under this Ordinance. This is not to say that there will be a uniform imposed on public service drivers or drivers of taxis or tourist coaches. However, there is a need to prescribe minimum acceptable standards of dress. The Transport Regulations will also contain provisions for the licensing regulations of Rock tours. Government firmly believe, following research in this field, that there is a need to develop and enhance the Rock tour experience which visitors to Gibraltar are presently enjoying. On the one hand there is a need for a wider range of tours. This is a clear message from the cruise industry. In cases where cruise ships who are frequent callers at Gibraltar and bearing in mind that many cruise passengers enjoy taking sea cruises with their favourite operators, a large proportion of passengers do not take Rock tours in Gibraltar because they feel that they have already seen all our sites. The Regulations which are being drafted in this area will provide for two distinct range of tours. The tours that will be offered to visitors from the coach park and those that will be offered to visitors of cruise ships. This recognises that there are different markets which are attracted by different experiences at different prices. The basic aim of the exercise is to make available to visitors a wider range of sightseeing options than is presently the case. The first stage in this process is the dismantling of the so-called traditional Rock tour as this sends the wrong signals to our customers. The implication of having the single official Rock tour is that once this has been done there is nothing else to see and do. I consider that the dynamic range of new products will include walking tours, tours which will be offered exclusively by taxis, tours which will be exclusively offered by coaches and tours which will be offered by a choice of either taxis or tour buses which will greatly enhance our tourist product. The Regulations will also provide for a complete freedom of choice in respect of transportation on all aspects in respect of the tourist movement and transfers be it from hotels, the airport or the port. This will do away with the unacceptable practice in this field in the past.

Sections 70 to 75 mirror existing provisions of the Traffic Ordinance. Section 76 provides for the repeal of

the Traffic Ordinance and for subsidiary legislation of those sections which have now been incorporated into this Bill and of matters which will be provided for in the Transport Regulations which will shortly be published. Section 72(2) of the Bill repeats some of the provisions of section 76 and I will be moving at Committee Stage that sections 66 and 72 be amended to avoid unnecessary repetitions. I would also like to add that there are a couple of typographical errors in the Bill and these will be corrected at Committee Stage.

Schedules 1 and 2 to the Bill mirror existing Schedules of the Traffic Ordinance and I do not believe I need to comment further on these as they do not contain material changes. I commend the Bill to the House.

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

HON J C PEREZ:

Mr Speaker, the Minister issued a press release on the 13th June in which he said that the object of the Bill before the House was to introduce a wide ranging system of control from transportation used by visitors to Gibraltar. Indeed, he has repeated the same argument this afternoon, which he had tried to implement by a consensus between the different sectors of the transport industry but which he has failed to achieve. The Minister is wrong. He need not bring this Bill to do what he said this afternoon or what he said in the press release he wanted to do. He could have done so by making Regulations under the existing Ordinance. Indeed, nothing in the Bill is directly connected with the interests of different sectors in the coach park or at the cruise liner terminal. That control of which he talks about will be the subject of Regulations to be made later as the Minister has said and one can only judge whether he is as equally fair to all interested parties as he says he will be when these Regulations are published. The fact that he has failed to reach a consensus between those parties will indicate that some of these sectors do not agree already that he is being fair to them. Mr Speaker, as long ago as 1985 the then AACR Government did away with the then Transport Commission by stripping it of many of its responsibilities related to traffic matters and later by removing its independence as a quasi-judicial body. They changed the name to Traffic Commission and placed the whole question of licensing regime in the hands of the Minister for Traffic and three top civil servants. The

effect of this was to politicise matters relating to licensing and transport which created a lot of controversy at the time and bitterness and resent in the sector with the Minister in the middle of every conflict and row. Soon after the GSLP took office in 1988 we restored an independent chairman and appointed representatives of each sector to serve on the committee and although the decision-making became more prolonged, the chairman of the Commission has always managed to achieve a consensus on most matters, having first aired this out with each sector, inside and outside the Traffic Commission. Indeed, I join the Hon Mr Holliday in commending Mr Brian Clark for his patience and his know-how and his magnificent work during the years since he became Chairman when we appointed him as the independent chairman.

What we are seeing today with this Bill, Mr Speaker, is not a Bill to do things which could not be done under the old Ordinance. This is a complete reversal of the policy that was put in in 1988 giving the Minister wider powers than the Minister had in 1985 when the AACR first changed the legislation. According to the Government press release and indeed the Minister has again repeated this, this afternoon, the role of the Government will be to control and supervise the manner in which the transportation is provided to ensure standards and to ensure that no one sector within the Transport Industry is able to destabilise the whole industry. For that the Minister is seeking to transfer all powers of licensing regulations and control to himself who will then become the Chairman of the Transport Commission, who will then appoint members to the Commission of his choice and in turn the Commission will appoint Transport Inspectors to do what the Minister wants them to do when the Minister wants these things done. The Minister says that that is not the intention and that might not be the intention but this is what the law gives the power for the Minister to do. When we are looking at the Bill in the House of Assembly we are not looking at the intention of what the intention is now or who the incumbent is but what the powers that are being extended to one individual in one area are. This is what I am talking about. Mr Speaker, these Transport Inspectors will be political appointments since they are appointed by the Minister himself, they definitely cannot be civil servants given that civil servants are appointed by the Governor on the recommendation of the Public Service Commission and there is nothing said in the Ordinance about the Public Service Commission employing people. The power of appointing these Traffic Inspectors are solely the responsibility of

the Minister and of those that the Minister chooses in the Commission to serve with him. The Inspectors in turn are given wide powers, not only to control and inspect transport, but any other duties as the Minister sees fit. Again, Mr Speaker, whilst that might not be the intention this is the powers that are being given to the Minister for Traffic in this Ordinance. Indeed, in section 7(2) he has even afforded, that is the Traffic Inspector, the power of entering premises where vehicles are kept, presumably for inspection which is ridiculous because any vehicle which is outside the public highway, be it a public service vehicle or a private vehicle, cannot be in breach of any law because it is outside the public highway and in a private garage. To give the Inspectors powers to go into a private garage to inspect a car when that vehicle is not on the public highway. Section 4(c), by the way, and this is a point we made in 1985 and which we repeat today, it says that one of the functions of the new Commission is to advise Government on matters relating to transport. So here we have the Minister advising himself on matters for which he has absolute powers. Again, a ridiculous notion. If we look at section 8, we will find not the introduction of the certificate of fitness, the re-introduction of the certificate of fitness which was part of the old law or at one stage was part of the old Traffic Ordinance. If hon Members would have cared to look back long enough they would have noticed that it was repealed by the AACR Government because on the introduction of the MOT Test Centre in Gibraltar there were regulations made which still exist today governing the MOT test for taxis and other public service vehicles which extend far greater than the normal MOT test for a private vehicle because it takes into account the appearance, the colour, the size, the sitting capacity and everything else. All the standards that the Minister says he wishes to see introduced are already law and supposedly already being enforced by the MOT Test Centre. Although he says that the intention is to incorporate this in the MOT test so as not to duplicate, that already happened when the first MOT Inspector Mr John Zayas opened the MOT under an AACR Government. That happened at that time and continues to happen today. So what he says he wants to introduce in respect of standards supposedly is happening today. What has not happened since then is that the Traffic Commission, the independent Traffic Commission, could have always appointed an MOT Test Centre operative or inspector as a Traffic Inspector to check that those standards were being applied. That has not happened.

Mr Speaker, the Government are clearly, in this Bill, drawing a distinction between existing taxi licences and new licences. Although I am told that the Minister is saying that it is not the policy or intention to issue new licences and indeed he has repeated this this afternoon, the fact that he is placing in this Bill a distinction between an existing licence and a new one leads people to believe that that policy or intention could change at any time. Indeed, he has said this afternoon, that section 17 which talks about the owner being the driver of the vehicle will be a spent thing once the present generation of taxi drivers go out and a new regime comes in. That is contrary to the spirit of the continuance of transferability of existing licences which the Minister defends in another clause in the Bill, because if they are going to be transferred on present conditions, unless the Minister is saying "no, they are going to be transferred, but once they are transferred only an owner will be able to drive the taxi" and then it will not be a licence as the one that is presently in force today but that licence, once transferred, will have certain restrictions which the old one has not. All this, of course, has an impact on the value of the licences today. Indeed, when there is a clear statement of protection of existing licences in section 23(2) where it provides for a continuance of transferability of existing licences, there is also a statement in that same clause that the Minister may, at his discretion, make new licences transferable as well although the statement of intent is that they will not be. In section 22, and the Minister knows this because we have discussed this outside the Chamber, in our view the fact that the clause says that every application for renewal must be deemed as a new application for the licence, seems to limit the protection afforded in 23(2) only up to the time of renewal, that is to say, although one section says that licences before November 1990 will continue to be transferable, section 22 in turn says that every application for renewal will deem to be an application for a new licence. I think that unless section 22 does not refer directly to the part in section 23(2) where that protection is afforded, the Ordinance could be construed to mean something different than what the Government might want it to be.

Mr Speaker, in section 10 the Hon Mr Holliday has said that the intention of section 10 basically is in order for the Commission to enforce a city service when the need arises. I put it to the Minister that the power that he is giving himself under section 10 is wider than that of providing a city service and that there is a

wording in the existing legislation and in the existing regulations on city service which should limit those powers to city services because it says that "in particular for securing that on such days and at such times as shall be notified from time to time by the Commission to the registered owner" the vehicle to which the said licence refers "shall not be used to ply for hire or reward within the limit of such areas or undertake such activities as may be specified". The Minister could, at any given time say "today this public service vehicle will not be able to ply for hire anywhere in Gibraltar", whereas the measures contained in the Regulations when the city service was first passed relate the clause to a city service and define it better. I think this is again too wide-ranging a definition which gives the Minister wider powers than certainly necessary for what he says he intends to use it for.

In sections 51 and 52 Government are introducing a new category of licences for chauffeurs and for chauffeur-driven hire car operators. The Minister seems to think that there is a demand for limousines in Gibraltar with chauffeur driven cars. Certainly, with the chaotic traffic situation as it is I do not see how we can afford huge limousines with chauffeur-driven cars on our roads. But he also seems to believe that the existing private hire cars and their drivers ought to come under this category of licences rather than be a taxi licence restricted under regulation as it is in the Traffic Commission at the moment. Let me say that if the intention of Government Members is really to protect existing licence holders and to protect the value of those licences today, that one must take into account the provisions of the chauffeur-driven hire car operators if one is serious about protecting those acquired rights and the value of the existing taxi licences. The House I am sure will recall that the historical controversy with taxi drivers arose over the licensing regime on private hire cars way back in the middle of 1980.

Mr Speaker, section 69 again gives the Minister powers to make regulations pertaining to any aspect of transportation from A to Z. I say from A to Z because there are defined from A to Z and then ZAA and ZBB because that was when there were not enough letters in the alphabet, says that anything that we might have not forgotten to define he can also have the power to regulate upon, that is to say, a blanket power to regulate about any aspect certainly relating to the Ordinance but the Bill is so open to absolute power by the one person that controls it which is the Minister for

Traffic that he is giving himself absolute powers to do what he likes, when he likes, in what area he likes. Although we might have a Ministerial commitment today on the intentions of the Minister and that might well coincide with the thinking and aspirations of the industry today the new law does not provide and does not afford protection even for a period of reflection if the Minister changes his mind overnight on these matters. For a Government that have repeatedly claimed a "hands-off" approach over departmental affairs with the dependence on expert advice, the Government Members are now doing what they accused us of doing when we were in Government, when it was not true, we were not doing that. Here is an example of the complete opposite of what they claim politically to want to achieve. The Minister in the front line, issuing licences, revoking licences, appointing Inspectors, summoning people to answer him with absolute powers over people's livelihood in some cases. This is totally unacceptable to Opposition Members and we will not support the Bill, Mr Speaker.

Let me say that on a minor technical point I have gone through some of the sections that are being repealed and some of the sections that are being amended in the Traffic Ordinance and I believe that because the draftsman is still working with an old copy of the law, he is repealing some sections that are already repealed and amending some sections which might not be the correct ones, but as I have not gone through all of them, I certainly found a couple of inaccuracies there.

In conclusion, Mr Speaker, I would remind the House that there is no need to introduce this Bill, giving such draconian powers to the Minister for Traffic in order to be able to regulate traffic and transport matters even to the extent that the Minister has explained this afternoon. This could well have been done with the existing Ordinance and with an independent Traffic Commission. Again, that the Bill is basically about transferring these powers to the Minister other than that the amendments are a subsidiary of the basic issue that the Bill addresses which is that and that the supposed protection afforded to holders of existing licences, although we take at face value that this is what Government Members wish to do and wish to achieve, is not there in law because the law leaves loopholes for this to change at any time in the future. There could be a promise by the Minister and that promise can be broken and we cannot depend, as legislators, when drawing a Bill as important as this to the House, on the promises or intentions of people. This is just not good enough, Mr

Speaker, and we will vote against the Bill on the general principles of it.

HON CHIEF MINISTER:

Mr Speaker, it does not seem to me that it is any harder to break a promise than it is to change a law. What the hon Member is really saying is that the Government must not be trusted with powers because it might exercise them in circumstances that they have said that they will not, and that the hon Member does not think that that is a safe situation because we might break our promise, well, what makes him think that excluding the power from this Bill protects the victims of a broken promise because it is almost as easy to break a promise as it is to bring a new Bill to this House at some future time to give us the power which he now argues we must not have in case we break our promise. I have never heard it said before in a Parliament in a democracy. I have heard it said before that governments bring bad legislation to Parliaments but I have never heard it said before in a Parliamentary democracy, even in a colonial Parliamentary democracy that Ministers must not have powers because their promises and their undertakings may not be reliable. Like much else of what the hon Member has said, it really does beg the question of how the hon Member would survive intellectually if he was not living in a colony. The extent to which he criticises things which are normal everywhere else in the democratic world except in a colony I think his colonial status is a security blanket which he dares not let go of and this is in sharp contrast with the macho, asserted, almost independent style of Government that they used to advocate when they were in Government. Either the hon Gentleman is politically schizophrenic or he is simply not happy for us to exercise powers and to pursue agendas which they were apparently, let me say with my support, always attempting to bring about. Indeed a lot of which they did successfully and happily for Gibraltar achieve in bringing about in terms of extending the executive powers of the democratically-elected Ministers of the people of Gibraltar as opposed to the unaccountable exercise of powers by colonial administrators. I take note of the hon Gentleman's change of direction and I will bear it in mind. Nor can he have his cake and eat it. He cannot at one and the same time argue and criticise us for bringing to this House a Bill which he says gives the Minister too much power and in the very next breath say that of course the Bill is quite unnecessary because the Minister already has all the powers that he needs to do it. Either he has already got the powers to do it, in which case the

Bill is unnecessary, or he does not already have the powers to do it and in which case he cannot criticise us for bringing an unnecessary Bill but he certainly cannot argue both. He will have to select one of those two arguments. Either we are bringing in a Bill which is a novelty in that it transfers draconian powers to the Minister or we are bringing to this House an unnecessary Bill because all the powers that it seeks are already provided for in the existing legislation. It has got to be one or the other, I just do not see how it can be both.

Mr Speaker, the hon Member can tell it to the marines if he would have this House believe that when he was Minister for Government Services with responsibility for Traffic, the Transport Commission was the sort of independent, politically-untainted, arm's length entity with which he never interfered. It is certainly not the feedback I get from the Commission members of the time. It is certainly not the impression that they were labouring under. But still, the hon Member is trying to suggest that when he was Minister with responsibility for Transport, the Government of Gibraltar took no lead and no responsibility and no active participation in matters relating to Transport, all I can tell him is that he was even in grosser dereliction of his duties than even he has admitted to. I do not see what makes the hon Member think that it is illegitimate, or rather, that it is unnecessary for the Government of Gibraltar to involve itself in these matters, since in every meeting of the House of Assembly he says "the chaotic traffic situation", holding the Government responsible for matters of traffic and then when we try to take political control of things for which he is quite rightly going to hold us politically responsible, he accuses us of interference. Either he believes that traffic is something which the Government of Gibraltar should interest itself in or he does not but if he does not he must stop accusing the Government of presiding over a chaotic traffic situation because the Traffic Commission is still operating as it was when he left it to us. Therefore, I am very happy that he should hold me politically accountable for the state of the traffic but then he must not seek to deprive me of the mechanisms to have the authority to implement my traffic policies. Rather like what the Foreign Office says to its colonies "we cannot have responsibility without power" and therefore I am sure the hon Member will agree with me that if he is going to seek to hold us responsible he cannot at the same time criticise us for wishing to have a sufficient degree of interest over the body responsible

for that. I do not see why the hon Member, even if one were to accept, which I certainly do not, that in his day the Traffic Commission was arm's length from him and that he had to wait until the meetings finished to find out whether the Commission had done things that he liked or things that he did not like. Fine, he can crack jokes like that if he likes, but I am not going to buy them. But even if that were the case, I do not see why the hon Member should believe that it is illegitimate for the Government to have a role, given its responsibility. If there is chaotic traffic in Gibraltar people do not say "oh, Mr Clark" or "oh, the Chairman of the Traffic..." People rightly say "what is the Government doing about traffic jams and about traffic lights and about roads and about public transport systems". When people get into a taxi and it is tatty or into a bus and the smoke is coming out people do not say "what is the Traffic Commission doing about this?", people rightly say "what is the Government doing about this?". He obviously does not agree but I do not see what distinction he draws between the regulation, for example, of transport matters which he thinks Government Ministers must not touch with a bargepole, and development and planning matters. He must know that for the eight years that he was in Government the Chairman of the Development and Planning Commission was the Minister for Trade and Industry and that three other Ministers were members of the Commission and that they sit in judgement over people's development rights and licensing applications and whether they can do this or whether they could paint their house in pink or whether it would have to be in blue, or whether they could put up this partition or not. I do not see this sort of philosophical distinction that the hon Member makes in his mind to justify to himself saying all that he has said about a statutory Commission, chaired by one Minister, when his own Government was happy to preside over an equally powerful statutory Commission, chaired by one Minister and membered by three others. These are inconsistencies with which the hon Member will have to come to terms himself but the idea that what the hon Member now seeks to do in matters of transport which is more or less, less in fact, in the area of transport than has been the standard model for some time in the area of, for example, development and planning. Anyone would think that the Minister is trying to invent the wheel again. Of course, the hon Member speaks about things being at arm's length from the political Government as if there was some virtue in this. Mr Speaker, the public interest of Gibraltar cannot always be left to consensus. The fact that Mr Clark has spent the last eight years trying to resolve the very serious problems that afflict

the public transport sector in Gibraltar by reference to consensus amongst people with conflicting commercial interests, probably explains why we have the most decrepit buses in the whole of western Europe, why we have a taxi system that works well when there is not a cruise liner in port but does not work at all for residents when there is and why we have such a bad public transport system in Gibraltar. The public interests of Gibraltar cannot always be addressed and settled by reference to the seeking of consensus. Leadership is often required and really all the hon Member is saying is that during the eight years that he had ministerial responsibility for this he was unwilling to provide that leadership and the result is clear for all to see. It is because the result is now clear for all to see that it is necessary for the Government now to take these radical steps. In matters of public importance such as this, I do not believe that it is legitimate for the hon Member, were he in Government, to take the view "well, this is the Traffic Commission, we do not want to politicise it, we do not want a Minister at the thick of it as I might have to make difficult and unpopular decisions, let me create a sort of quango that I can control from behind the scenes but do not have to take any of the public political responsibility for its decisions." Mr Speaker, the position of this Government is that we are prepared to provide political leadership. We are prepared to preside over the implementation of the policy and take the political responsibility for it and not try to deflect the political responsibility for the implementation of Government policies to some chairman. I do not see why the hon Member has got to be quite so critical of Ministers having powers or the Ministry of Transport having a hands-on approach and responsibility in matters of regulation of transport. Who does he think does this in the United Kingdom? He does not do it here, because the statute responsibility for awarding licences and for doing all the things that the hon Member keeps on saying is the Minister's absolute power is the statutory responsibility of the Commission, unless what he is saying is that because it used to be the case in his time he assumes it is also going to be the case in our time, that people that they appoint to committees are party yes men and that they are really just names and bodies to sit in chairs to say "yes bwana" to Ministers which is presumably what used to happen with committees when they were in Government. I do not see why he should assume that everybody that the Minister is going to appoint to these committees is necessarily going to fall into that category. He speaks as if he is more comfortable if these appointments were made by the Governor because if

these appointments were made by the Governor then they would not be political and then the democratically-elected Government of Gibraltar would not be in the driving seat and we can all relax. I expect that there are at least some Opposition Members who, judging by some of their forthright public statements in this regard, will be much happier to see powers of this sort in respect of defined domestic matters exercised openly by their elected Government. Indeed, I think it is common ground on both sides of this House that in respect of defined domestic matters when a piece of legislation says the "Governor" that that really means "Government" anyway and that the Governor simply has to rubber stamp whatever nominations are put up to him by the elected Government. And so it should be so. In England, Ministers make appointments and I do not see the Opposition saying "no, it should not be the Minister, it should be..." I cannot think of anybody, it should be somebody else, not the man responsible for this area of public affairs in the democratically-elected Government of the day because that is too political. We ought to give the power to somebody else who is presumably even less accountable to the electorate of Gibraltar than the Minister and I have great difficulty squaring the hon Member's remarks in this respect with what I know to be his general political philosophy generally speaking. I do not know whether it is for the benefit of the Members of the House or for the benefit of taxi drivers that may be listening over the radio, that he says these things. All I can say is that when I attended at our own request on Friday evening the general meeting called by the taxi drivers to discuss this, which I attended in the company of my Colleague the Minister for Tourism and Transport, Mr Holliday, to explain to them the effects of this legislation, not one of them made the point that the hon Member is making about whether it should be the Minister this or whether it should not be the Minister that. People in a democracy submit to Government, by the Government that they have elected and I do not see that public transport regulations should be an exception to that. The hon Member also made the point that Transport Inspectors will be political appointees. I do not know whether he harbours nightmares about political appointees meaning appointments by politicians or does the phrase "political appointee" mean that we are going to appoint party political hacks presumably so that we can choose the taxi drivers and other motorists who we know to be supporters of the other Party and use our statutory powers. It is a long time, I do not know how many months have elapsed since, 16th May 1996, but it is since 16th May 1996 that the people of Gibraltar have felt much less exposed to

that sort of "Uncle Sam is looking at you" than they do now, much less. It is a long time since anybody expressed the view that we must not do this, we must not say that, we must not challenge that, because of what the Government might do to us in return. The hon Member says that the Minister has absolute powers. I assume that the hon member has read the Bill before making his speech. There is nothing in this Bill that gives the Minister absolute power over anything. But of course what he means by absolute power is the right on the part of the Government to nominate appointees to the Commission which then has the statutory power and the statutory authority to regulate and to licence. The hon Member's definition of "absolute power" is powers that can be exercised by the democratically-elected Minister of the Government and therefore what he presumably wants is such powers exercisable by somebody other than the democratically-elected Government. The hon Member says and I do not really believe that he is mistaken, that all standards that my colleague the Minister for Transport now seeks to introduce into the transport sector, that they are now already law and supposed to be implemented. That does beg a question, does it not? If this has been law for so many years as he claims and if the implementation of it has been so demonstrably lacking, then it should not surprise him that the Government seeks the opportunity to tackle it by a different means.

The Minister for Transport said that it was not his intention to issue further licences. Mr Speaker, there is to be no statutory maximum of licences and, of course, it would be up to the Commission to issue licences within the bounds of such statutory maximum as the Minister may impose. The Minister may impose a maximum number of licences and the Commission would then not be able to issue more licences than the maximum but the issue of licences will be a matter for the Commission and I suppose that the Commission will indeed issue new licences if the Commission takes the view at some point in the future that the public interest of Gibraltar in the area of public transportation requires it. What the Commission presumably will not do is issue licences when they are clearly not required by the amount of business in the marketplace. I am sure that the Commission is not going to use its statutory powers to issue new licences to simply flood the market with licences to the commercial and economic prejudice of the people who are presumably earning their living in that line of trade.

I do not think the hon Member is right when he said that section 23, when read with section 22, has the effect of

depriving the security given to licences already in issue. The reason for that, Mr Speaker, is that section 23 makes it very clear that the provisions that limit transferability do not apply to licences first issued and therefore they do not lose that status because they have to be renewed and each renewal is deemed to be a new application. It is precisely for that reason that the language used is that the following does not apply to any licence first issued before the coming into effect of this Ordinance. That automatically leaves permanently safe, in the context of the hon Member was raising the point, those licences that exist prior to the coming into force of this Bill. The hon Member continually refers in this House to chaotic traffic. The "chaotic traffic situation in Gibraltar" he likes to say. I realise that there is no procedure in this House that allows me to ask him questions but if there were I would be minded to ask him what he believes that this Government have done which has resulted in a chaotic traffic situation? Given that we have not yet introduced, with the exception of King's Yard Lane and Victualling Office Lane, we have not yet introduced our traffic flow change plans. The hon Member will have plenty of opportunity which he will take whether it is justified or not, I am sure, to accuse us of having caused chaos in the traffic situation when we have introduced our traffic flow plans. If by "chaotic traffic situation" he means the inescapable and inevitable divert consequences of traffic diversion resulting from the Government's intense public infrastructure renewal programme, then I think that that element of inconvenience is well worth suffering for the excellent results that we expect at the other end when it is all finished. I really do wish that the hon Member would not keep on saying that the Minister will be issuing licences. The Minister will not be issuing licences any more than the Chairman of the Development and Planning Commission, who is also a Minister, issues Building Permits. If the hon Member wants people who may be listening to him to subscribe to the view that he is advocating, I think the proper thing for him to do would be at least to use language which was intended to misrepresent what this Bill says, what this Bill contains and what is the effect and consequences of this Bill.

Mr Speaker, Government do not say that everything that it will do pursuant to this legislation it will get right from the very beginning. There are many deep-seated problems, not just in relation to the cruise terminal and to the coach terminal but indeed to the condition of public transport or buses in Gibraltar. It is a matter of embarrassment to see the third world conditions,

indeed I think to describe them as a third world is a gratuitous, an unprovoked insult to some buses that I have seen in some third countries and the Opposition Members did nothing to assist the matter by changing the law as they did in their last year in office, I think it was to increase the maximum age to 50 years. Increased the maximum age that buses could be licensed, or does he not remember saying that in London they used to have double-decker buses from after the war and why should we not have them here in Gibraltar as well? Does that sound as decreasing to him? Therefore, such is the state of public transport and public transport regulation and issues in Gibraltar that the Government do need to take a bold approach. I suspect that everybody in Gibraltar, except the Opposition Member, applauds the Government's intention after years of dereliction to get to grips with the public transport system in Gibraltar so that at long last the people of Gibraltar can have the system of internal transportation to which we believe they have always been entitled.

HON J J BOSSANO:

Mr Speaker, referring to the last remark made by the Chief Minister, the hon Member is not the only Member that holds the views. I also hold them so at least he is wrong by one so the rest of Gibraltar excludes me and I think quite a number of other people. Let me say that he has spent a great deal of his contribution talking about a totally irrelevant matter because obviously he has not understood what has been said. He said he had great difficulty in equating the remarks about the Governor making appointments to the Commission. I have no doubt he had great difficulty, those remarks were never made. When the Hansard is produced and the Chief Minister has the opportunity to read it he will find that there are no such remarks in the contribution of the hon Member who spoke earlier. The reference to the Governor was not in respect of appointments to the Commission but in respect to the fact that civil servants are appointed by the Governor on the advice of the Public Service Commission and that on this occasion we had what may well be the first law which says "the Minister will appoint as a Transport Inspector", not the Commission, "the Minister, any person..." That is to say there is no requirement in the law as to qualifications or anything else, the person that is appointed by the Minister does not have to have a qualification about having a good character but the law then says he decides on the character of the people who drive buses, lorries and taxis, however bad his own character may be. Since there is no definition in the

law of what is good character, what may be good character to them may be bad character to somebody else. I can tell the Chief Minister that there are several notorious characters in Gibraltar who walk up and down Main Street very well dressed and it does not make them any better because of their dress. We certainly do not share the hang up that the Government Members have always had for appearances, perception, optical illusions. I do not think the Chief Minister can be as happy now about what happens with perceptions after the perception of the editor of the Financial Times about what he said in Madrid. Certainly this is not a Bill for an Ordinance to decolonise Gibraltar, though some people listening in might have thought so from the amount of time that the Chief Minister spoke about decolonisation as if in fact we were seeking to obstruct a new Constitution for Gibraltar in the Bill which brings to the House what is in fact a radical measure by his own admission. He says that they have had to take radical steps because we failed to act. What are the radical steps? The radical steps are to give a range of powers without the checks and balances that used to worry him when he was sitting here so that people will do what is required of them by the elected Government on the basis of either they agree to do it or they get thumped over the head until they do do it. Nobody is saying they cannot do it, of course they can do it they have got the majority in the House. The reason why they bring a Bill to the House is so that those of us who do not agree with it can put forward our views and have an opportunity to debate an issue and point out what we think is inconsistent, of flaws in the approach that they are taking. In fact, the Chief Minister mentioned that at his own request he addressed the General Meeting of taxi drivers on Friday to reassure them. He did not go there to tell them "you will do what I tell you or else..." he went there to tell them "you do not have to worry about the Bill because the Bill is good for you and we are not going to abuse the powers in that Bill to hurt you". If the things that are in this Bill and the powers that it creates are good for the industry why is it that the press release of the Government says they have had to do it because they could not get the agreement of the people in the industry. Is it that the people in the industry prefer to be in third world vehicles which is even an insult to third world countries that they like going around dressed in rags instead of being well dressed, that they want to put off tourists because they do not want any more tourists to come to Gibraltar and they do not want to earn more money. If the benefits are social evident how is it that the people who stand to benefit most, the direct providers of the

service, have not been persuaded of the wisdom of going down that route? This does not tell us precisely what the route is. It says that the Minister can make regulations for anything and specifically for anything as my hon Colleague has said from A to Z and because they run out of letters in the alphabet, they might have used the Spanish one and they could have put "n", but they did not, they went into AA and BB and CC. Let me say that since we were not persuaded in 1985 that it was a wise thing to remove the Commission, made up with chairman, who may be appointed by the Governor on the advice of the Government and that is not what we are questioning but he has a degree of independence, in that in fact in 1985 one of the things that the AACR got upset over was the fact that the Commission actually challenged the Government in court because the Commission did not agree with what the Government wanted to do. Obviously, that can never happen with the Commission chaired by the Minister, with people hand picked by them. What we are saying is that on paper it gives him absolute power because he is the chairman of the Commission, he then decides in his absolute discretion who he appoints to that Commission, he then appoints the Inspectors who will implement the policy and report to the Commission and he then uses that to advise the Government which presumably in respect of transport means himself. He then tells his Colleagues in Government what it is that they have decided in the Commission which he chairs with the people that he has put in there on the advice of his appointees as Transport Inspectors. I think this is a first in terms of appointing people who are going to be taking on duties that in some areas are duties currently done by police officers and in the new Ordinance will be done by police officers or transport...

HON CHIEF MINISTER:

It may be the first time that it is referred to clearly in legislation but I do not know who gave the Leader of the Opposition when Chief Minister the authority to appoint the persons who under the cover of the Employment and Training Board presently act as Labour Inspectors.

HON J J BOSSANO:

Mr Speaker, the people who were acting as Labour Inspectors were already in the service at the time. They were simply transferred from one Department to the other, they were not employed...

HON CHIEF MINISTER:

Civil servants, he appointed them Transport Labour Inspectors.

HON J J BOSSANO:

No, no, Mr Speaker, the Chief Minister is wrong. The people that were appointed in the ETB to carry out what the law said were appointed because they were transferred there from existing employment somewhere. This creates a group of inspectors with police powers to declare on the fitness of vehicles and the point that we are making is of course that the idea of having a standard of fitness for public service vehicles came about before the MOT testing came in. The MOT testing superseded that. We are now going into a situation where the MOT says a vehicle is road worthy and fit to be on the road and fit to carry passengers and fit to carry boxes from the stevedores to the customer and the Transport Inspector says "I do not agree with what the MOT Inspectors have done, so I declare that I am going to suspend you and remove you from the road". I do not know whether the MOT answers directly to the Minister or the Traffic Commission has anything to do with it because the other incredible thing about the contribution of the Chief Minister is that he divided his contribution into two halves - one half was his decolonisation credentials which he defended with a fervour here which has been notably absent in his meetings with Mr Cook and the other thing was that he went on to explain that it was completely wrong for my Colleague to hold him responsible for traffic chaos and traffic jams and traffic lights and the state of traffic and then not want to give the Minister the power to do it. The law does not give the Minister the power to do it. If I am to believe the Explanatory Memorandum, Mr Speaker, the Explanatory Memorandum says "the Traffic Commission established under the provisions of the Traffic Ordinance will retain responsibility for the regulation of traffic." All his contribution about traffic chaos has nothing to do with this Bill. As I understand it from the Explanatory Memorandum the Traffic Commission remains with responsibilities for traffic and what this does is to regulate the licensing of operators, the appearance of the vehicles, the state of the vehicles in terms of how fit they are to be carrying people or carrying goods in addition to their road worthiness, how presentable they are, totally subjective valued judgement.

HON CHIEF MINISTER:

Would the hon member give way? In the first place he must know that the persons who are discharging various functions, not just Labour Inspector in the ETB were mainly craftsmen in GSL which he decided to appoint to the function of Labour Inspector. If he wants people to believe that that is almost as innocent as the Public Service Commission recruiting a civil servant, he can then invite people to believe whatever he likes. The hon Member must also know, if he was listening, I do not think he was because he spent most of his time chatting with his Colleague, but his Colleague the hon Mr Juan Carlos Perez who threw in the quip about traffic chaos and that the point that I was making was that one could not at one and the same time argue that Government should be politically accountable for matters that were the responsibility of a statutory commission and at the same time criticise them when they try to bring statutory commissions further in. It was not a debate about the Traffic Commission, if the hon Member knows that the Traffic Commission is statutory and that it is independent from the Government why does he consistently make a quip about the traffic chaos that the Government is creating? That is the point that I was making. I know that this Bill does not alter the status of the Traffic Commission. It does not deal with traffic at all it deals with transport but he must know the context on which that exchange took place which is completely irrelevant to the twisted purpose to which he is now seeking to put it.

HON J J BOSSANO:

Yes, Mr Speaker, precisely, he knows that it is completely irrelevant so in defending the Bill he is so incapable of producing rational arguments that his defence of the Bill has been divided into two sections, one dealing with colonialism and the other dealing with traffic chaos. He spent more time talking about traffic chaos presumably on this semantic point that if the Government is questioned in this House about traffic chaos then we should not be complaining about the fact that they are taking over powers. They are not taking over powers, the powers of traffic remain with the Traffic Ordinance and if he thought that there was any rationale in what he was saying then the logic of that rationale should have been to say we are repealing the Traffic Ordinance and the new Transport Commission will

be responsible for everything including making sure that there is no traffic chaos because it is quite right that the Government should hold us responsible but one cannot have responsibility without power, that is what he said. [Interruption] Perhaps, Mr speaker, I hope I have not provoked him into doing it in that area because we will have to vote against the next one as well. Certainly, his remark that one cannot have responsibility without power is totally irrelevant to this Bill because this Bill is about giving power precisely without responsibility because they are not accountable to anybody other than themselves and we will vote against it.

HON J J HOLLIDAY:

Mr Speaker, a number of issues which I was going to raise have already been raised by the Chief Minister although I think for the sake of clarity there are a number of issues which I would still like to comment on.

One is the comment that was being made by the Leader of the Opposition when he states in his intervention that the Chief Minister and myself went to the meeting of the Gibraltar Taxi Association on Friday to reassure them and tell them that there was nothing to worry about. This is simply not correct. What the Chief Minister and I did was offer to attend the meeting in order to clarify various issues which were of concern to them. There were some of the answers that they got which they did not feel satisfied with and others were but I think the most important point to make was that we went there to clear a lot of malicious rumours that were being circulated amongst taxi drivers and mini-buses operators which were clearly not true. This was clearly pointed out at the meeting and I think there was satisfaction as to the clarifications which were given at that meeting.

The other point which I would like to make is in respect of the Memorandum of Understanding. Since coming into office in May 1996 I have dedicated a lot of time and effort both with the Gibraltar Taxi Association, taxi drivers that are not members of the Association and public service vehicles mini-buses operators to try and reach an agreement and a structure which would enable us to deliver a proper infrastructure for transport to meet the requirements of the public and the tourism sector. Unfortunately, agreement has not been possible on all issues and therefore we had no option but to proceed with this legislation and the Taxi Association themselves were in agreement with this sort of procedure because they

could not be held responsible for the acts of all their members. They, as an Association, or the Committee, may have agreed with the Government on a number of issues but they could not be held responsible as to how all the members would react in respect of agreements that were reached. Therefore, we had no option but to go down this road. The issue of certificates of fitness and road worthiness certificates, I think within the tourism environment that we now live I think we need to have a certificate of fitness in place because we have to ensure that the standards of the inside of cars that provide public transport are in order. It is not just a matter of mechanics which is covered by the road worthiness certificate but actually the certificate of fitness would deal with the standards of the inside of the car. Obviously, we will be looking at the logistics of this in order to try and streamline both certificates in order to create as less bureaucracy as possible in this respect. The Chief Minister has obviously raised the issue of new licences but I think because I have been in constant contact with both the Taxi Association and the public service vehicles, mini-coaches, I think I need to reiterate that there is no intention whatsoever at this stage to have any additional licence granted. If they are, it would be as a result of growth in the market which will mean it would be a matter of supply and demand. Therefore, there is nothing to worry about.

The point I would like to make in respect of the chauffeur and chauffeur-driven cars, I think the structure that we are trying to create for this particular sector of the transport issue is in no way meant to undermine the taxi operators. I have discussed this with the Taxi Association, they recognise that there may be the need for this but obviously we will be making sure that the type of vehicles that we accept as chauffeur-driven cars and the minimum prices for these services will be in no way in conflict with the taxi service. Therefore, Mr Speaker, in concluding, the objectives of this Bill is to create an appropriate structure to regulate and licence transport operators with the establishment of the Traffic Commission, with Transport Inspectors, to ensure a high standard in transportation which allow for regulations to be formulated for an improved transport sector to meet the needs of the public and the tourism industry and at no time is it meant to be to destabilise the current operators, be it taxis or mini buses.

Question put. The House voted.

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

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

Absent from the Chamber: The Hon Miss M I Montegriffo

The Bill was read a second time.

HON J J HOLLIDAY:

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

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

I have the honour to move that the House should resolve itself into Committee to consider the following Bill clause by clause: The Insider Dealing Bill 1998.

THE INSIDER DEALING BILL 1998

Clauses 1 to 7

Question put. The House voted.

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

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

Absent from the Chamber: The Hon Miss M I Montegriffo

Clauses 1 to 7 stood part of the Bill.

Clause 8

HON P C MONTEGRIFFO:

Mr Chairman, I did promise the hon Gentleman Mr Isola some clarification on the provisions of Section 8(1)(a) which hon Members will recall is related to the question of territorial scope of the offence of insider dealing. The query raised by the hon Member was why the offence was effectively limited by virtue of sub-section 8(1)(a)(i) to an offence that took place on a UK regulated market rather than any other European market. Mr Chairman, the directive requires as a minimum condition the fact that an offence should be created within the member state in respect of which the offence takes places. The view taken is that although Gibraltar does not have its own stock exchange or regulated market, that we are required to make it an offence in Gibraltar for a dealing that is undertaken from Gibraltar on a UK exchange. We are required to make that an offence for the directive to be properly transposed in Gibraltar, otherwise the situation whereby in fact we create an offence which is then no offence at all because there is no stock exchange or regulated market in Gibraltar at all. The relevant provision, Mr Chairman, is article 5 of the directive and the second sentence of Article 5 is the one that actually identifies the minimal needs that must be adhered to in the transposition of this directive. The position is unusual in this respect, Mr Chairman. It is unusual that as a matter of general jurisdictional convention we will not be creating in Gibraltar an offence which has as one of its elements an activity conducted outside Gibraltar but I am advised by the hon Attorney-General that extra territoriality is indeed the basic ambition of the directive and other member states that have civil law systems will be moving towards extra territorial application of these provisions at some future stage. In the case of Gibraltar and the UK it will be limited to offences within member state UK

and I have asked also, for the purpose of clarification to this House, I have asked also what the position is in the UK were Gibraltar to have a stock exchange or some other form of regulated market in the future. This would presumably use the same logic required in UK to make an offence in the UK of activity undertaken in the UK with regard to insider dealing on the Gibraltar exchange. Indeed, it has been confirmed to Gibraltar, in the event of a Gibraltar stock exchange being set up, UK law would have to recognise that because it would be part of the same member state for community purposes and the same logic would apply in reverse. Mr Chairman, it is a somewhat unusual position but nothing that we believe is in any form of concern. We believe that in this case the transposition of the directive is well made in this fashion and that there is no room for any further concern. Indeed, if I remember the hon Member's comments when the issue was raised by him, I think his concern was not so much the point that I had articulated and sought to give an explanation on but I think the reverse, I think the hon Member's concern was "why should it not be the case that if you are dealing from Gibraltar and, say, the Amsterdam Exchange, it should not be an offence?" Surely, it is desirable, and that is the way I read these comments that it should equally be an offence. It would be consistent in a pan-European system of offences that some provision should be made for that type of situation. In other words, one can now happily sit in Gibraltar like one can happily sit in Birmingham and insider deal on the Frankfurt Exchange and be quite free of any possible prosecution. What we have done in Gibraltar is to recognise that we are part of UK member state for the purposes of this directive and therefore any activity undertaken in Gibraltar on the UK Exchanges would be covered by our criminal law.

HON J J BOSSANO:

Mr Chairman, I think the revelation that the Minister has made in fact is quite fundamental because to my knowledge this is the only occasion when this has happened. I do not recall ever, perhaps he can confirm whether this is so or if he has not got the information he can find out if there is any other example, to my knowledge, in every single other transposition the United Kingdom has treated Gibraltar and Gibraltar has treated the United Kingdom as if they were separate member states in respect of each other's obligations and rights. Therefore, if we were treating the United Kingdom as another member state as we have done with every other directive then we would be saying here "anybody in Gibraltar that deals in any other

stock exchange in any other member state including the United Kingdom is guilty of an offence". In fact, in every other piece of transposition that I am aware of we deem Gibraltar to be a member state in its own right and this is why all our legislation is in fact the meeting of the requirement that we should transpose into the national law of the member state whatever it is the directive requires us to do. I do not think there is any other occasion when his interpretation has been put that we and the United Kingdom are one and the same indistinguishable member state and this raises important issues about, if the mechanism is okay for this one then why is it that it has not been possible to think of using that as an alternative methodology in so many other areas? We would certainly welcome more information on that because it is a new argument and it certainly was not the answer we were expecting.

HON P C MONTEGRIFFO:

Mr Chairman, I am not sure I can give the hon Member much more except perhaps to add that I think the view might also be taken that if Gibraltar did not transpose the directive in this way there would then be within UK member state as viewed from third parties, namely other member states that do view Gibraltar and UK as one member state, the view could be taken that there was therefore a part of the UK member state that had not criminalised an activity within UK member state, namely there was a little point in UK member state as seen from Frankfurt, Milan and Paris, where it was possible to insider deal in the UK without an offence being created and I think the concern is that therefore this would be an insufficient transposition of the directive from the UK member state point of view. I am not aware, I should tell the hon Member, of any other example that falls into this category. Indeed, I raised the issue with the draftsman, with the hon Attorney-General, and I am not aware of any other issue but we have certainly come to the view that in the context of this directive and of course whilst one is vigilant about these things, Mr Chairman, that it is a reasonable way to proceed.

Question put. The House voted.

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

The Hon P C Montegriffo
The Hon J J Netto
The Hon R R Rhoda
The Hon T J Bristow

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

Absent from the Chamber: The Hon Miss M I Montegriffo

Clause 8 stood part of the Bill.

Clauses 9 to 21 and Schedules 1 to 3

Question put. The House voted.

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

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

Absent from the Chamber: The Hon Miss M I Montegriffo

Clauses 9 to 21 and Schedules 1 to 3 stood part of the Bill.

Schedule 4

HON P C MONTEGRIFFO:

Mr Chairman I have given notice of a minor typographical amendment. In the list of exchanges in Part II to the schedule, one of the exchanges is the exchange known as the "Nouveau March" which should be "nouveau Marche".

The Capital 'N' should be a small 'n' and the 'e' added at the end of what is currently "March".

Question put. The House voted.

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

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

Absent from the Chamber: The Hon Miss M I Montegriffo

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

The Long Title stood part of the Bill.

THIRD READING

HON ATTORNEY-GENERAL:

I have the honour to report that the Insider Dealing Bill 1998 has been considered in Committee and agreed to with one formal amendment and I now move that it be read a third time and passed.

Question put. The House voted.

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

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

Absent from the Chamber: The Hon Miss M I Montegriffo

The Bill was read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that the House do now adjourn to Thursday 16th July, 1998 at 9.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 4.55 pm on Monday 13th July, 1998.

THURSDAY 16TH JULY 1998

The House resumed 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 K Azopardi - Minister for the Environment and Health
The Hon 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 A J Isola
The Hon R Mor
The Hon J C Perez

ABSENT:

The Hon Miss M I Montegriffo
The Hon J J Gabay

IN ATTENDANCE:

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

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the Committee Stage of a Bill.

Question put. Agreed to.

HON ATTORNEY-GENERAL:

I have the honour to move that the House should resolve itself into Committee to consider the Transport Bill 1998 clause by clause.

THE TRANSPORT BILL 1998

Clause 1 stood part of the Bill.

Clause 2

HON J J HOLLIDAY:

Mr Chairman, there are amendments here. Clause 2 requires to be amended in that the definition of categories B, C, C1 and D are not correct. These have been amended in order to bring these in line with the latest definition of the various categories.

HON J J BOSSANO:

Is this definition derived from the EEC, from the UK or some other source?

HON J J HOLLIDAY:

The amendments introduced in clause 2 do take into account the amendments of the Traffic Ordinance introduced by the Traffic Ordinance (Amendment) EEA Driving Licence Ordinance 1997. The effect of these amendments is to alter the definition of the different categories of motor vehicles in respect of which a driving licence is needed. The amendments were required to give effect to Community obligations and are as follows:

"category B" means a motor vehicle with a maximum authorised mass not exceeding 3,500 kilograms and having not more than eight seats in addition to the driver's seat: motor vehicles in this category may be combined

with a trailer having a maximum authorised mass which does not exceed 750 kilograms:

combinations of a tractor vehicle in category B and a trailer, where the maximum authorised mass of the combination does not exceed 3,500 kilograms and the maximum authorised mass of the trailer does not exceed the unladen mass of the tractor vehicle;

"category C" means motor vehicles other than those in category D and whose maximum authorised mass is over 3,500 kilograms: motor vehicles in this category may be combined with a trailer having a maximum authorised mass which does not exceed 750 kilograms;

"category C1" means motor vehicles other than in category D and whose maximum authorised mass is over 3,500 kilograms but not more than 7,500 kilograms: motor vehicles in this sub-category may be combined with a trailer having a maximum authorised mass which does not exceed 750 kilograms;

"category D" means motor vehicles used for the carriage of persons and having more than eight seats in addition to the driver's seat: motor vehicles in this category may be combined with a trailer having a maximum authorised mass which does not exceed 750 kilograms.

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

Clause 3

HON J J HOLLIDAY:

Mr Chairman, Clause 3 sub-section (5) should be amended by substituting the word "their" by the word "there", this is just a typographical error.

Clause 3, as amended, stood part of the Bill.

Clauses 4 to 7 stood part of the Bill.

Clause 8

HON J J HOLLIDAY:

Mr Chairman, sub-clause 2 should be amended by inserting after the word "cancelled" the words "by the Commission". Basically, this amendment is to allow the Commission to be able to revoke certificates of fitness. This amendment basically reinforces the view that it is the

Commission and no other party who should be able to revoke or cancel a certificate of fitness.

HON J J BOSSANO:

Mr Chairman, as I read it the amendment does not say "a certificate of fitness may only be revoked by the Commission", what it says is "that if it is revoked by the Commission." We are putting "a Certificate unless previously revoked or cancelled by the Commission." Is not the certificate of fitness given by the Inspector? Are we saying then that the Inspector can give it but he cannot cancel it?

HON J J HOLLIDAY:

Mr Chairman, that is correct. I think that this amendment to clause 2 should be read in conjunction with the amendments that are subsequently being produced in sub-clause (3) where the powers of the Inspector to revoke a licence are being removed and therefore it is only the Commission who would have the powers to be able to actually revoke and cancel a particular licence.

HON J J BOSSANO:

Mr Chairman, we are voting against the Bill as a whole as a matter of principle because we do not agree with the system but obviously we want to know what the Bill is going to be precisely doing. Clearly that is why we are interested on the information, not because of any other reason.

HON J J HOLLIDAY:

Mr Chairman, under sub-clause (3) under clause 8 the word "revoke" is being deleted from the Bill and we are inserting after the word "suspend" the words "or the Commission may revoke or cancel". Basically what we are trying to achieve is what I have previously said under sub-clause (2) and that is to remove the powers for an Inspector to be able to revoke the licence and solely give these powers to the Commission itself. If we move to sub-clause (4) again we will be deleting the word "revoked" or "revokes" and inserting after the word "suspends" the words "or the Commission revokes or cancels" again following the same line of thought.

HON CHIEF MINISTER:

Mr Chairman, if I could just explain that to the Opposition Members. As presently drafted the Inspector has the power to revoke or suspend. Consequential on these amendments the Inspector will only have power to suspend. The Inspector's power of revocation has been eliminated and the power of that revocation has been added to the Commission's power which previously was just suspension. Now the Inspector only suspends and the Commission can suspend or revoke.

HON A ISOLA:

Is the position then that under 8(1)(a) the Transport Inspector does not give a certificate, under sub-section (b) the Commission can given an authority and under 8(3) the Inspector can get his own back and suspend the licence that the Commission has given an authority for and the Commission would do nothing about it.

HON CHIEF MINISTER:

There is a difference between a certificate and authority but the certificate of fitness continues under 8(1) to be issued by the Inspector. So the Inspector has powers to issue and powers to suspend the certificate of fitness but not powers to permanently revoke or cancel. He issues but he does not also have the power to withdraw permanently. He can suspend but only the Commission can revoke altogether.

HON J L BALDACHINO:

Mr Chairman, if that happens and the Inspector has suspended a licence, what happens after that? If the thing happens as the Chief Minister has said, the Inspector can give a certificate of fitness but he cannot revoke it and only suspend because it is the Commission who probably has the decision of revoking, what happens in between that the decision of suspending, how long will it take before a decision is taken whether the licence is given back or revoked?

HON CHIEF MINISTER:

The intention is that the suspension should relate to the need to remedy a specific, unidentified defect. It is envisaged that these will relate to safety issues. If I could go back to the question that the Hon Mr Isola made before, as he knows, the difference between an authority

and a certificate is that an authority is in effect the Commission giving a certificate of fitness even though the vehicle does not strictly comply with the requirements. The Inspector gives the ordinary communal garden vanilla flavour certificate of fitness. If there were circumstances in which the whole Commission felt that even though a vehicle does not strictly comply with every requirement and therefore would not qualify for a plain vanilla certificate of fitness, the Commission nevertheless feels that the vehicle ought to be allowed to be used, the Commission but not the Inspector, can give an authority for the vehicle to be used as a taxi even though, then the Inspector can suspend and only the Commission can revoke.

HON A ISOLA:

The point I am making is that I appreciate the difference between a certificate and the authority, but where a Transport Inspector refuses to issue a certificate because he does not believe that that vehicle meets the requirements of the law, the Commission takes a different view and says for a series of reasons, whatever they may be, we believe the vehicle does either comply or is sufficiently close to the requirements of the compliance that is needed and it issues an authority and then the Transport Inspector inspects the vehicle again and says "no, I do not believe this complies with the law" which is his legal obligation to do, and he suspends the licence. What does the Commission do then? Does the Commission have the power to interfere with that suspension or is it only the applicant, or the holder of that licence, that can on a point of law appeal?

HON CHIEF MINISTER:

Mr Chairman, the powers of the Inspector to suspend the authority is limited to breaches of conditions contained in the authority itself. The Inspector cannot override the decision of the Commission but if the Commission says "I give you authority to use the vehicle on condition a, b and c..." the Inspector can then police those conditions and may suspend for breach of the conditions under which the authority was issued but it cannot be a vicious circle. That is not either what it is intended or how it will work nor indeed the inevitable consequence of the language but if the hon Member feels that that is not so we are happy to hear his arguments on it.

HON A ISOLA:

It is not a question of arguing, Mr Chairman. I am simply saying that the requirement in 8(1)(a) is that if the provisions of the Ordinance and subsidiary legislation made under the Ordinance for the requirements of the fitness, size, fittings, colour, which is what is laid down in law are not complied with, the Transport Inspector would not issue a certificate. Under 8(3) if on the inspection of a public service vehicle it appears to the Inspector that the vehicle is not complying with any provisions of this Ordinance, the same criteria that he set in 8(1)(a) then he can suspend the authority that the Commission has given. What I am simply saying is that test made in 8(1)(a) and 8(3) are exactly the same and in between 8(1)(a) and (3) yet the Commission issues the authority but in law the Transport Inspector can say "to hell with the Commission I am going to get my own back on them, I am going to suspend this driving licence" and there is nothing the Commission can do about it. The Commission cannot interfere.

HON CHIEF MINISTER:

On a reading of sub-clause (3) I can see that there is room for that interpretation that the hon Member places on it. These are matters of course for administrative guidelines at the end of the day to the Inspectors. We do not envisage that it will operate like that. What the hon Member is saying is, if I understand him correctly, is that the Commission may decide to give an authority which by definition involves some non-compliance with some other requirement of the Ordinance or of the Regulations and that the Commission, having given such an authority, there is nothing in clause 8(3) which prevents the Inspector from saying "well, even though the Commission has given you the authority, my powers of suspension are not limited, are not constrained, by the fact that the Commission has allowed this and therefore even though the Commission has allowed it, I am going to suspend the authority". If we could move on I will confer to see if the draftsman agrees with that and if not perhaps suggest some amendment that makes it clear that that is not what is envisaged.

HON A ISOLA:

It is a real possibility in the sense that all Transport Inspectors when they see a vehicle may not be fully aware of all the terms and conditions that may have been made under that authority from the Commission itself. I

assume that they will have a licence on each vehicle that will say "the conditions if any" and that might make it a bit easier but I would have thought that if one puts in 8(1)(3) or 8(3) "subject to the provisions..." or "subject to compliance with the authority issued by the Commission under 8(1)(b)" then they can do that.

HON CHIEF MINISTER:

On reflection Mr Chairman we do not think that there is sufficient merit in the hon Member's observation because reading the whole section together it is sufficiently clear that the Inspectors' powers are indeed limited in relation to overriding the conditions of the authority and if he will bear with me I will just read the point where I think that happens. It says "if on the inspection of a public service vehicle it appears to a Transport Inspector that the vehicle does not comply with any provisions of this Ordinance or of subsidiary legislation made under this Ordinance, or the requirements of the Commission..." and then it says "or where an authority has been issued with the terms and conditions of the authority". In other words, we think it is sufficiently clear that the words after the "or" are clearly establishing a separate regime in respect of vehicles the subject matter of an authority. Therefore, we do not think that there is the danger that the hon Member highlighted. I accept it is a subject matter of judgement about the interpretation of the words but we just do not think...

HON A ISOLA:

I understand what the Chief Minister is saying, it is simply that the way it is drafted it enables anyone of those items to be picked up upon.

HON CHIEF MINISTER;

But the hon Member is reading the bits that "or where an authority has been issued" as being part of the list of items that precedes it and it is not. The "or" then goes on to establish a separate category.

HON A ISOLA:

Let me just give the Chief Minister an example. If a vehicle is issued with an authority by the Commission and the condition is that it fixes its two front lights within a period of 30 days, or whatever it may be, and two days later the brakes fail, is the Chief Minister

saying that because he has an authority the only thing that can happen is that the brake lights are actually fixed and not the brakes themselves because surely that would not comply with the first part which is any provision of the Ordinance because it would not be fit and therefore they have the power to suspend.

HON CHIEF MINISTER:

The first four lines applies to every vehicle including vehicles the subject matter of an authority except to the extent that the authority gives an exemption, temporary or permanent. Obviously the Inspector can enforce the law in relation to the matters not the subject matter of the authority but in respect of issues specifically covered by the authority, the Inspector can police compliance with those conditions contained in the authority but not himself override them. That is the regime. If there is a certificate issued notwithstanding the fact that one has not got headlights one can still use ones vehicle as a taxi, and the Commission gives 20 days or a month to remedy that defect and during the course of those, 20 or 30 days that the Commission has given to remedy the defect, an Inspector finds the taxi without the headlights, he cannot for that reason suspend the authority but if he finds the vehicle with some other breach of the regulations which is not the subject matter of a specific exemption, then of course he can withdraw the authority because the authority presupposes and requires compliance with all the applicable laws except the ones being specifically exempted. So, certainly the Inspector cannot suspend the certificate for a reason that is the subject matter of an exemption on the face of the certificate but he can for any other reason. He also polices the conditions of the certificate so if after 30 days the headlights have not been fixed then he can also suspend the certificate for failure to have headlights.

HON A ISOLA:

I appreciate the difference there, but the only point I would make is that the words the Chief Minister has read to me were "an authority or certificate has been issued". It is as if those words were not there because they apply to the only two forms of licences, a certificate or an authority. They do not add anything to the previous definitions of the other three parts. It should simply say "or when the terms and conditions of any authority or certificate" because it does not add anything by putting them both in, if he had said "or where an authority has been issued with those terms and conditions" but by

putting "authority" and "certificate", I do not think it adds anything. It is a question of judgement as the Chief Minister says and if he is not persuaded...

HON CHIEF MINISTER:

I accept that the hon Member makes his suggestions in an attempt to improve the legislation and that he is not making any political point and I hope that he accepts that our rejection of his points is in the same spirit. Of course, as to the use of the word "certificate" as well as "authority" here, I am not sufficiently familiar with the details to be able to tell him at this point whether it is possible for the Inspector to apply conditions to the issue of a certificate as well as. When the Inspector issues the certificate of fitness he may have power, I cannot on my feet tell him whether this is so, I may be mistaken but in those circumstances it would be relevant for the word "certificate" to appear there as well.

Clause 8, as amended, stood part of the Bill.

Clause 9 to 11 stood part of the Bill.

Clause 12

HON J J HOLLIDAY:

Mr Chairman, clause 12 should be amended in sub-clause (3) by deleting the words "or elsewhere". This is mainly to avoid foreign companies from applying for taxi licences.

HON J C PEREZ:

Mr Chairman, if that is the object of the Minister, unless there is something specific in the clause where it says "licences from companies incorporated outside Gibraltar shall not be entertained by the Commission", I think that the removal of "or elsewhere" would make the clause read "that only companies incorporated in Gibraltar shall be signed by all the directors" but it does not exclude other companies automatically from applying if they are incorporated outside Gibraltar.

HON CHIEF MINISTER:

The hon Member is right and indeed reflects entirely the amendment that the Government wanted, it has not been sufficiently set out there. What should be deleted are

the words after the "company". The words "incorporated in Gibraltar or elsewhere" should be deleted so that it just reads "an application for a road service licence for a company shall be signed by all the directors". That is the intended amendment, indeed that is the amendment that we have agreed in writing with the Gibraltar Taxi Association to introduce and indeed it is just that the amendment that has been moved does not reflect what it is intended to do. I am grateful to the hon Member for pointing it out.

HON J J HOLLIDAY:

Mr Chairman, what we would like deleted are the words "incorporated in Gibraltar or elsewhere". Sub-clause (3) should now read, "An application for a road service licence by a company shall be signed by all the directors...".

Clause 12, as amended, stood part of the Bill.

Clauses 13 to 16 stood part of the Bill.

Clause 17

HON J J HOLLIDAY:

Mr Chairman, clause 17 sub-section (6) should read "without prejudice to the provisions of sub-section (4)" and not sub-section (1) as it appears in the draft. This is basically a typographical error.

Clause 17, as amended, stood part of the Bill.

Clause 18

HON J J HOLLIDAY:

Mr Chairman, clause 18 shall be substituted for the following clause:

"Temporary replacement of taxis

18. Where a vehicle licensed as a taxi is undergoing extensive repairs the Commission may grant a road service licence as a taxi (in this section called a substituted licence) in respect of another vehicle in place thereof subject to the following conditions -

(a) the period of the substituted licence shall not exceed three months in the first instance, but may be extended for successive periods not exceeding three months;

(b) satisfactory evidence shall be produced to the Commission as to the relevant facts; and

(c) the use of the substitute vehicle shall have been approved in writing by the Commission,

and a condition that another vehicle shall not be used in substitution for a licensed taxi except in accordance with the provisions of this section shall be deemed to be incorporated in every road service licence."

Basically the change is to allow second-hand broken down taxis to be replaced in the same way as the ordinary taxis that have not paid any import duty at the time of importation into Gibraltar as new vehicles. This amendment creates a level playing field for all taxi licences, be it for new cars or for cars that have been purchased second hand.

Clause 18, as amended, stood part of the Bill.

Clause 19 stood part of the Bill.

Clause 20

HON J J HOLLIDAY:

Mr Chairman, clause 20(3) should be amended by substituting for the words "a new opportunity to be heard" by the words "thirty days to show cause against the revocation or suspension".

HON CHIEF MINISTER:

Mr Chairman, this amendment reflects a concern that has been put to the Government that because road service licences, let us call them taxi licences, can be revoked for breach of the condition of the licence but that many of these licences are not actually used in fact by the owner of the licence but rather by a named driver, that if the named driver commits a breach, it is not necessarily fair for the licence owner to lose the licence immediately and this clause is intended to give the owner of the licence the opportunity to show cause why the licence should not be revoked even though an

infringement has been committed, maybe by somebody other than the owner, that is all.

Clause 20, as amended, stood part of the Bill.

Clauses 21 to 26 stood part of the Bill.

Clause 27

HON J J HOLLIDAY:

Mr Chairman, in order to show consistency with the amendments that have been made earlier today, I would like to propose that we amend sub-section (3) to read: "an application for a road service licence by a company" rather than "for a company" and delete the words "incorporated in Gibraltar or elsewhere" so that we do read this clause in the same way as we agreed to amend sub-section (3) of clause 12.

Clause 27, as amended, stood part of the Bill.

Clauses 28 to 58 stood part of the Bill.

Clause 59

HON J J HOLLIDAY:

Mr Chairman, in clause 59, sub-section (2), I would like to insert the word "in" prior to the words "paragraph 1 of Schedule 1".

Clause 59, as amended, stood part of the Bill.

Clauses 60 to 68 stood part of the Bill.

Clause 69

HON J J HOLLIDAY:

Mr Chairman, in sub-clause (1)(s) I wish to make an amendment by inserting the word "by" prior to the words "licence holders" in order to let it read properly. It is a word that is missing.

Clause 69, as amended, stood part of the Bill.

Clauses 70 and 71 stood part of the Bill.

Clause 72

HON J J HOLLIDAY:

Mr Chairman, clause 72 is to be amended as follows:

(1) In sub-clause (2) by inserting after the reference "(2)" the following words "without prejudice to section 66(1) and (2)", and the capital letter "W" in the word "were".

(2) After sub-clause (2), there shall be inserted the following sub-clauses -

"(3) Without prejudice to section 66(3), a fine imposed on an unincorporated association on its conviction for an offence shall be paid out of the funds of the association.

(4) Without prejudice to section 66(4), where an offence committed by a partnership is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of a partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly".

Clause 72, as amended, stood part of the Bill.

Clauses 73 to 75 stood part of the Bill.

Clause 76

HON J J HOLLIDAY:

Mr Chairman, in clause 76(2) paragraph (a) shall be amended by deleting the words "Transport Manager". Paragraphs (b) and (c) should be deleted and paragraphs(d), (e) and (f) shall be respectively renumbered (b),(c) and (d). In the newly numbered paragraph (c) this should be amended by substituting for sub-paragraph (III) the following "(III) by deleting paragraph (I)." These are typographical proof reading errors which as amended should update the position.

Clause 76, as amended, stood part of the Bill.

Clause 77, Schedules 1 and 2 and the Long Title stood part of the Bill.

Question put on all the clauses including amendments. The House voted.

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

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

Absent from the Chamber: The Hon Miss M I Montegriffo
The Hon J J Gabay

Clauses 1 to 77, Schedules 1 and 2 and the Long Title stood part of the Bill.

THIRD READING

HON ATTORNEY-GENERAL:

I have the honour to report that the Transport Bill 1998, has been considered in Committee and agreed to with amendments and I now move that it be read a third time and passed.

Question put. The House voted.

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

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

Absent from the Chamber: The Hon Miss M I Montegriffo
The Hon J J Gabay

The Bill was read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

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

Question put. Agreed to.

The adjournment of the House was taken at 10.30 am on Thursday 16th July 1998.