

GIBRALTAR

HOUSE OF ASSEMBLY



HANSARD

25th February, 1999

(adj to 26th February, 18th March,
9th & 26th April, 1999)

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Thirteenth Meeting of the First Session of the Eighth House of Assembly held in the House of Assembly Chamber on Thursday 25th February 1999, at 2.30 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 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 J C Perez
The Hon Dr J J Garcia

IN ATTENDANCE:

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

PRAYER

Mr Speaker recited the prayer.

OATH OF ALLEGIANCE OF NEW MEMBERS

The Hon Dr Joseph John Garcia took the Oath of Allegiance.

MR SPEAKER:

I am quite sure that the House would like to welcome Dr Garcia. He now becomes a representative of Gibraltar, for all the people of Gibraltar, and I am happy that he is here and I wish him the best.

HON CHIEF MINISTER:

On behalf of the Government I would like to welcome our new parliamentary colleague, Dr Garcia. I hope that our deliberations across the floor of the House will be of a sensible and constructive nature. I hope and I am confident that they will be. I take note of the fact that the Leader of the Opposition, presumably his parliamentary leader, has allocated to him the portfolio of tourism. I do not know whether this will mean that the Leader of the Liberal Party will now only speak in the House on matters of tourism and about nothing else or whether it means something else. But still it remains to be seen.

I remember when I arrived in the House on the same occasion as he has arrived in the House, in a by election, when the Chief Minister of the day, now sitting on his right, welcomed me into the House, I was then seated where the Hon Mr Perez is sitting, and he said to me, "It took me 17 years to get from that seat to this seat" and I said to him that I did not expect that it would take me that long and indeed it did not. I hope the hon Member a successful parliamentary career in service of the people of Gibraltar. He will understand that I do not wish him luck in crossing the floor to form a Government because that would mean necessarily that the people of Gibraltar had tired of their present Government which I hope they will not do for some considerable time to come. But nevertheless I welcome him to the House as a colleague.

HON J J BOSSANO:

Mr Speaker, obviously, in the Opposition we appreciate your words and that of the Chief Minister on behalf of the Government. In case he has not realised it, in fact, Members of the Opposition speak in all the debates in which they wish to participate irrespective of what their official

position is, as indeed do Ministers. So there is no reason why we should wish to gag Dr Garcia and restrain him in speaking only to tourism anymore than the other 14 elected or indeed two ex officio Members who are free to participate in any debate and I am sure the Chief Minister would not wish to constrain the contribution of our new Member. He will be speaking as the official spokesman for the Opposition, for all of us, specifically on those items as Ministers do but nevertheless I am sure that he will be able to make a contribution on a whole range of subjects in which we have to debate and indeed, I hope that his contributions here will be treated with the respect that they will merit even if we are rarely able to influence the Government in their decision-making.

HON DR J J GARCIA:

Mr Speaker, I would like to thank you for your welcome and the Chief Minister and the Leader of the Opposition. It is an honour and a privilege to be able to be amongst you and to have been elected to this post. It is something which obviously will be taken very seriously. Only to tell the Chief Minister that I am sure that my contributions will be as constructive inside the House as they have been outside the House. I think there will obviously be a learning curve and I would ask for patience and for tolerance for that reason.

I think the Chief Minister already mentioned and has stolen part of the fun, in the sense of us being the only two who have been elected on a by election and as I say, sometimes history tends to repeat itself so we will have to see what happens this time round.

In the same way, as I have said, it is an honour and a privilege to be amongst hon Members, to serve the people, I look forward to doing that now as a parliamentarian. I think it would be an even greater honour and an even greater privilege to do that from the Government side of the House when we win the next general election.

STATEMENT BY CHIEF MINISTER

HON CHIEF MINISTER:

Mr Speaker, I would like to make a short statement on a matter, with your leave. I have received from the Falkland Islands Government the following letter addressed to the Hon P R Caruana, Chief Minister, Gibraltar. It is addressed to the Legislature and people of Gibraltar from

the Council and people of the Falkland Islands and it reads: "The elected members of the Falkland Islands Council send their greetings and wish the people of Gibraltar well in their dealings with their neighbours. Please be aware of our support and understanding of the difficulties that you are experiencing at the moment. Yours sincerely. The Hon J Birmingham on behalf of the Legislative Council and people of the Falkland Islands". I read it out for the record.

CONFIRMATION OF MINUTES

The Minutes of the Meeting held on the 11th September, 1998, having been circulated to all hon Members, were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

The Hon the Minister for the Environment and Health laid on the Table the Report of the Gibraltar Health Authority for the year 1 April 1996 to 31 March 1997.

Ordered to lie.

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

- (1) Statement of Consolidated Fund Reallocations approved by the Financial and Development Secretary (No. 4 of 1998/99).
- (2) Statement of Improvement and Development Fund Reallocations approved by the Financial and Development Secretary (No. 2 of 1998/99).

Ordered to lie.

ANSWERS TO QUESTIONS

The House recessed at 5.00 pm.

The House resumed at 5.30 pm.

Answers to Questions continued.

The House recessed at 8.10 pm.

FRIDAY 26TH FEBRUARY 1999

The House resumed at 10.40 am.

Answers to Questions continued.

The House recessed at 1.10 pm.

The House resumed at 3.05 pm.

Answers to Questions continued.

The House recessed at 5.30 pm.

The House resumed at 5.40 pm.

Answers to Questions continued.

BILLS

FIRST AND SECOND READINGS

THE EUROPEAN COMMUNITIES (AMENDMENT) ORDINANCE 1999

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the European Communities Ordinance so as to make provision consequential on the Treaty of Amsterdam signed at Amsterdam on 2nd October 1997, be read a first time.

Question put. Agreed to.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Thursday 18th March 1999 at 3.00 pm.

Question put. Agreed to.

The adjournment of the House was taken at 7.40 pm on Friday 26th February 1999.

THURSDAY 18TH MARCH 1999

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 Environment and Health
The Hon R Rhoda – Attorney-General
The Hon T J Bristow – Financial and Development Secretary

OPPOSITION:

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

IN ATTENDANCE:

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

DOCUMENTS LAID

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

Question put. Agreed to.

The Hon the Financial and Development Secretary laid on the Table Statement of Improvement and Development Fund Reallocations approved by the Financial and Development Secretary (No. 3 of 1998/99).

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE EUROPEAN COMMUNITIES (AMENDMENT) ORDINANCE 1999

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, hon Members will recall that we debated and passed a similar Bill, I think it was in 1996, or some time in 1997, relating to the Maastricht Treaty.

The purpose of the Bill is quite straightforward in itself and it is to add to the definition of Treaties and to the definition of Community Treaties in the European Communities Ordinance, amendments thereto agreed in the Treaty of Amsterdam concluded in that city in June of last year. The new paragraph 1 indicates the part of the Amsterdam Treaty which relates to the European Communities and that is Articles 2 to 9, Article 12, and the other provisions of the Treaty so far as they relate to those Articles and all except one of the protocols to the Treaty. Articles 2 to 9 are the main parts of the Amsterdam Treaty which concern the Communities. Articles 2, 3 and 4 make substantive amendments to the three Treaties establishing the three Communities. Article 5 amends the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annex to the Council decision of

the 20th September 1976, about which we all know something. Articles 7 and 8 make simplification amendments to the three Treaties establishing the three Communities to delete obsolete provisions and update some others. Article 9 repeals the Convention of the 20th March 1957 on certain institutions common to the European Communities and the Treaty of the 8th April 1965 establishing a single Council and a single Commission of the European Communities whilst saving their remaining extant provisions. Article 12 provides for the renumbering of the provisions of the Treaty on the European Union and the Treaty establishing the European Community.

Mr Speaker, clause 2, hon Members will note, just as was the case when we did the same exercise in respect of the Maastricht Treaty, clause 2 does not list those provisions..... Article 1 of the Amsterdam Treaty which replaced Title 5 Common Foreign Security Policy and Title 6 Justice and Home Affairs in the Treaty establishing the Union do not provide a basis for the adoption of Community legislation and neither give rise to rights and obligations of Community law, nor name the Community Treaties. Put in other words, that they are the inter-governmental parts of the amendments introduced by the Treaty of Amsterdam and they do not affect Community rights and obligations as such.

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, it is difficult to speak on the merits of the Bill, it is possible to speak on the general principles. There is little merit in the Bill because it is a Bill that reflects in the laws of Gibraltar the disaster that the text of Amsterdam represents and will represent for us and I regret that we have not heard anything in the moving of this Bill to suggest that assurances have been obtained from the United Kingdom to put on the record in this House what has been claimed in the past about the level of protection that the United Kingdom will be able to afford. Therefore, we are going to be voting against this. I am sure that must have been anticipated by the Government since we made our position in the previous Bill to which the Chief Minister has just referred which was in December 1997, January 1998, not as far back as 1996. At the time I suggested that it might be a prudent thing to send a message back to

the United Kingdom that we really need to clear up what we are supposed to be doing in Gibraltar in relation to Community law. Suggesting that we should defer implementing the Maastricht Bill produced a reaction from the Chief Minister in which he said that what I was trying to do was create an air of uncertainty which would produce an atmosphere of instability, anxiety and crisis. In case he intends to do the same thing again, let me pre-empt and say I am not trying to create an atmosphere of instability, crisis, bring the Government down or do anything else other than do what I think is my duty in this House which is to point out how we feel about the Bill and why we are voting against and what objections we have got to it, which I think is what I am supposed to be doing, if we are going to be voting against it, which we are.

In analysing the principles that the Bill reflects in its implementation, we have to go to what has been said in connection with the Amsterdam Treaty and its Protocols and I note that we are implementing all the Protocols except one and what was said when we appeared before the Foreign Affairs Committee of the House of Commons in 1997. I think in particular I want to draw the attention of the House to the fact that the provisions that we are implementing include the application of new Title 3A. In respect of new Title 3A we said in 1997 and we say it today that the United Kingdom is in fact in a position that in adopting Title 3A measures, it can be put in having to decide whether it stays out because of Spanish objections over recognition of Gibraltar or it abandons the defence of Gibraltar's position and proceeds on its own inside the participation of those measures. What it will not be able to do under the new Title 3A is in fact to hold up the measures for the whole of the European Union. We argued in 1997 that the effect of Title 3A was when aligned to the provisions of Protocol Y, the Protocol on the United Kingdom and Ireland, that this participation involves them giving notice that they are going to take part in a measure and that if within a reasonable period of time the measure cannot proceed with the participation of the United Kingdom, then the rest may proceed without. It is quite obvious that the position therefore is one where Spain can say, "we will veto this" and the United Kingdom will only retain a veto for a limited period which is not defined. When we appeared before the Foreign Affairs Committee of the House of Commons in November 1997 I put this argument to them then and I pointed out at the time that a research paper produced by the House of Commons library itself came to the same conclusion. On page 18 of that Research Paper of 1997 which is 97/83 it says "since all the measures under the new title are to be adopted by unanimity, the United Kingdom would acquire a veto

during the negotiation process but only for a reasonable period of time. After this period, if agreement could not be reached with UK taking part, then the remainder of the Member States can adopt it and it would not apply to the United Kingdom." We have seen in fact that Spain has been willing to hold up Community measures not for a reasonable period, which is all this requires them to do, but for an indefinite period, in order to maintain its position of non-recognition of Gibraltar's institutions and therefore we believe that if where the United Kingdom has a veto as it has, and that the inter-Government agreements, it is not willing to exercise that veto but it has it, then in a situation where the veto is only there for a reasonable limited period of time, the odds are enormously increased against us and against our inclusion. The Chief Minister has pointed out that Title 6 measures which were not applied in Gibraltar on the implementation of the Maastricht Treaty in 1998 will not be applied by this Bill either but of course one of the things that the Maastricht Treaty does is to reduce the area of application of Title 6 Inter-Government Decisions, and those decisions that were previously inter-government are now coming under the new Title 3A. The fact that those will not apply to us because they are not Community obligations, does not have the same force as when the argument was put in 1998 because some of the areas that were agreed in the Justice and Home Affairs Council in May 1998 when we were left out of a range of Community Conventions, some of those are already being discussed, were being discussed last week in the Justice and Home Affairs council as passing under the new Title 3A. The transition from Maastricht to Amsterdam in the Justice and Home Affairs area was one of the major elements in the agenda of last week's meeting and this is reflected in the meetings that are public. In the discussion that took place, where the Home Secretary made public the intention of the United Kingdom to join, the provisions of Title 3A, the bulk of the measures under the new Title 3A, as well as some of the ones under the Schengen acquis, the material provided by the press office of the Commissioner dealing with the position of the United Kingdom explains in order to summarise the position that these areas of cooperation between Member States can take place in what they label three gateways. The first gateway is described as that of the Schengen acquis which is covered by the protocol on Schengen where the United Kingdom faces a Spanish veto on each measure. The gateway of Title 3A, where the United Kingdom has a veto for a limited period and then loses it, and the balance what remains still as inter-government which is what was there under Title 6 of Maastricht and where the United Kingdom continues to have a veto but has shown no inclination to use it in our defence. Consequently, we are now facing what I believe has been described as a position where

there can be a progressive erosion of our rights within the European Union, and it seems to me that the worst possible scenario that we could have is the one that we have because I have not heard anybody saying that we can actually opt out. That is to say, it seems to me that the situation we finish up in is one where the United Kingdom determines what it wants to opt into having determined it wanted to opt out initially and it tries to take Gibraltar with it. Gibraltar is not given, at that stage, as it ought to have, the opportunity of taking its own decision independent of the United Kingdom as to whether it wants to opt in or it does not want to opt in. The United Kingdom then seeks to negotiate our entry in such measures with our own institutions being recognised to carry out the functions they have always carried before. Spain can and will raise objections on the grounds that she raises objections constantly that by having duplicate institutions in Gibraltar we are being treated as if we were the equivalent of a sovereign state and that therefore this is detrimental to its claim over Gibraltar. In that process, and this is apparently what happened between 1997 and 1998 in the inter-government Justice and Home Affairs Conventions, in that process at one point the United Kingdom decides that the only way to overcome Spanish objections is that Gibraltar should stay out. Here we have a situation where it is Spain that decides what we are in for and what we are not in for, it is not even UK anymore. I am not sure that it always has been. I would like to have my nose pointed in the direction as to where it has always been between 1986 when they joined and 1987 when they left us out of the Airport deal and subsequent to 1987 until 1998 when they left us out of the Convention. In between I have no recollection of any other areas that Gibraltar has been left out of, other than the ones that were amendments to the airport situation where the United Kingdom accepted the repetition of the 1987 Airport Exclusion clause. The only exclusion that I am aware of is the 1987 Airport Exclusion clause which has been repeated in a number of subsequent directives and regulations. If they left us out of others then they have got away with leaving us out without telling anybody here. I believe that we should expect to have confirmation from the Government in the House as to whether the assurance that the Chief Minister was trying to get the support of the Foreign Affairs Committee on in November 1997 has been given or not been given because in November 1997 he said "although we are assured that she would not be entitled to do so, should Spain attempt to exclude Gibraltar from measures to be drawn under the new Title 3A, in the field of visas, asylum, immigration and other policies relating to the free movement of persons which include external foreign control, police and judicial cooperation, Her Majesty's Government will ensure that Spain's attempt will not succeed". He asked the Foreign

Affairs Committee to do this for Gibraltar. Let me say for the record that when we met the Foreign Affairs Committee yesterday we pointed this out to them, reminded them of it and told them that if they had not asked for such an assurance from Mr Cook on the last occasion, they should do it on this occasion. But of course if the assurance has been given then I think it should be in the public domain and it should be on the record in the House and then we can see whether it is honoured when the time comes or not. In the absence of such an assurance, then it seems to me we are implementing in the House the application of the Treaty in the knowledge of all the dangers it contains without any way of being able to protect ourselves from its consequences and in the hope that the magnanimity on the part of our neighbour will not lead to too draconian an effect on Gibraltar when different measures are considered. I think that apart from the fact that many of these measures affect individual rights and if we are talking about the purpose of the Treaty of Amsterdam, coming on top of the Treaty of Maastricht in amending the original Treaties so as to reflect in what is the constitution of the Union, our rights as citizens of the Union, then it seems to me our rights are being marginalised as much in the exclusion from these measures as they were in 1976 in the exclusion of our right to vote. If we have a situation where the right of a person that has got a matrimonial problem to be able to obtain redress by a judgement of a court in any Member State being enforceable in any other Member State and in Gibraltar that is not a right that exists because we have been left out of the relevant Convention, even though the UK could have vetoed it. The UK could have vetoed that Convention in the inter-government conference in May last year. What will they do when they cannot veto it any more under Title 3A?

I believe, Mr Speaker, that in those circumstances, given the fact that it is not as if this was a long overdue measure, it is not an unreasonable thing to defer, the passing of the Committee Stage of this Bill at this meeting of the House and that the Government should use that as a signal of our concerns and discontent at the way this is developing, which is not consistent with the views that were put by the British Government, that we had nothing to worry about in 1997. I put that view across to Government, not on the basis that I want to create chaos, fear or anything else, but that I believe we ought to be doing something ourselves about it. It is all very well to blame them and I do not minimise in any way where the blame lies. The blame lies with the colonial power but the colonial power is doing what colonial powers have always done, putting its interests first and the interests of the colonial people second. Has it not always been so? That does not mean that because they have

always done it, they are entitled to keep on doing it. But what it does mean is that we must not just take it for granted that that is the way colonial powers behave and there is nothing we can do about it and shrug our shoulders and say "well, let us just put up with it". No, I hesitate to use the word "fight" but I think we have to put up a fight. I know that it is very dangerous to use the word "fight" but we have to put up a fight. We have to show that we are not happy with the situation. I think it is difficult to enlist the support of others if we ourselves, in this House of Assembly, just pass a Bill on the basis that all we are doing is what we did in 1996 or 1997 and that this is not important, this is very important and it is very serious.

For most people in Gibraltar it is too complex, for most people in Europe it is too complex. The 450 million people that these Treaties are about, in the vast majority of cases have not got a clue what any of their parliaments are doing. There is no question as to whether what they are legislating is going to materialise or not because what we are saying is, as I see it, Mr Speaker, that we in this House are voting so that provisions agreed to in Amsterdam will apply in Gibraltar, which creates rights and obligations, except that we do not know whether those rights and obligations will exist or not exist until the time comes when Spain decides whether to block it or not block it. No other parliament is being asked to do that, only this one and therefore we are not prepared to do it.

HON CHIEF MINISTER:

Mr Speaker, with the greatest of respect for the Leader of the Opposition he says that we are voting for provisions, he says that we are voting for the implementation into Gibraltar law of a treaty which has provisions which are capable of being operated in the future contrary to our interests. What he does not appear to appreciate and when he says, "let us put up a fight", Mr Speaker, I do not shirk as he has found to his cost, I do not shirk from fights, what I shirk from is from fights that I cannot win. In other words, I do not enter into fights which I cannot win not because I do not have the courage or because Gibraltar has not got the courage or because we do not want to take the pain of the fight, but because there is simply no ground upon which to fight. Mr Speaker, he must know that the United Kingdom is the country that enters into international obligations on behalf of Gibraltar in this case and that when the United Kingdom, given our EU status, unless what he wants to do is that he wants to put ourselves outside the European Community but when the United Kingdom signs up the Treaty of Amsterdam, warts and

all, and it has warts, I shall come to that in a moment as far as Gibraltar is concerned, but when the United Kingdom Government signs up to the Treaty of Amsterdam in the circumstances which he knows and of which I will remind him in a moment, it was signing up to that for Gibraltar and for the United Kingdom. Gibraltar is already bound by the Treaty of Amsterdam and we are not in this Bill in this House today choosing to incur liabilities. We are not choosing to incur obligations which we are at liberty to choose not to incur. All we are doing is changing a law in Gibraltar which lists which are the European Union Treaties by which Gibraltar is bound. We are amending that Bill to add to the bottom another one by which we are already bound. The hon Member knows what we are doing here. He knows that the Treaty of Amsterdam has been entered into by the United Kingdom. That it binds Gibraltar and that we are not by this Bill agreeing to or accepting the provisions of the Treaty because we are not required to. This is an international Treaty which has direct application in Gibraltar and what we are doing is including this Treaty in a definition of Community Treaties which appears in our European Communities Ordinance. Therefore, the suggestion that by failing to pass this Bill we are putting up a fight or we are making a point is just not correct, Mr Speaker. Gibraltar is part of the European Community. We are part of the European Community on the terms that the 15 Member States agree either in the Treaty establishing the Community or in the Treaty establishing the Union. They have done that and those are the new rules for the European Community, whether we like them or not and those are the terms upon which Gibraltar is a part of the European Community whether we like it or not and the idea that by not implementing this Bill we are somehow holding out against or we are somehow keeping at bay obligations that we do not think are fair on us is just not a correct analysis, either of Gibraltar's status within the European Community or indeed of the purpose of this Bill which has nothing to do with that. I believe that the hon Member understands that point although he may not agree with it.

The option does not exist but if it did exist, let us say that what had been agreed in Amsterdam did not become valid law in Gibraltar or did not regulate Gibraltar's status and Gibraltar's relationship with the European Community unless and until this Bill was passed, let us assume that that was the case, which it is not. Does the hon Member believe for one moment that Gibraltar could be within the European Community on the terms of those parts of the Treaties establishing the Community which we liked and not on the terms that we did not like? [Interruption] Of course it is the wrong way round but that is because we are not an independent Member State, that is because we are a colony, that is

because we are in the European Community on such terms as the United Kingdom chooses to contract on behalf of itself and on behalf of Gibraltar and that is a painful but real reality and there is no point Opposition Members either believing the contrary or still, less helpfully, trying to get others outside of this House to believe the contrary. They do not do themselves or Gibraltar a service by suggesting that this is a matter capable of remedy as if Gibraltar had the power, the position or the ability somehow to change this or to resist this. Mr Speaker, that does not mean that I do not agree with a large part of what the hon Member has said by way of valued judgement on where we find ourselves but I have to distinguish and he has to distinguish as well, because when one is in Opposition one can afford a little bit more latitude, but he has to distinguish between what we like and what we do not like on the one part, between what we like and what we do not like on the one hand and what is within our powers to remedy and to effect and to change on the other. I am not going to let a debate about the first lead us all up the garden path in relation to the second.

Mr Speaker, the hon Member has pointed out that under the new Title 3A which as he quite rightly says is included in the implementation here, that the UK has a veto for a limited amount of time, in other words, indefinite, it cannot hold it up for very long, in other words, when the other Member States tire of the United Kingdom's holding up they can proceed without her. That is true but it is not the whole journey. It is true in so far as it goes. What the hon Member has failed to point out is that the reason why that is the case is because the United Kingdom is out and has the right to opt out. Title 3A relates to new measures. Title 3A is not about the existing Schengen acquis, Title 3A is about things yet to be decided to be done. New things that the European Community may wish to do in the future in relation to asylum, visas, et cetera. Because the United Kingdom has the right not to participate in those, the rest of the Member States quite rightly said to the United Kingdom "look, you cannot delay the negotiations indefinitely if what you are then going to do is opt out", because even though the United Kingdom has under the Title 3A the right to participate in the negotiations to see if she wants to opt in or opt out. Therefore, what the provisions to which the hon Member has referred means is that the United Kingdom can participate in the negotiations for a period of time after which the other Member States will proceed without the United Kingdom who will be deemed to have opted out. Given that the United Kingdom is free to opt out but she is free to participate in the preliminary discussions and in the negotiation and then at the last minute decide whether she is going to participate or not, she cannot delay for ever otherwise the United Kingdom will have

acquired a veto in what is a first pillar measure. Therefore that is the context in which the United Kingdom has what the hon Members calls a "veto for a reasonable period of time" in Title 3A.

The hon Member is quite right in saying that one of the things that Amsterdam does is to transfer some of the things which are now in the Justice and Home Affairs Third Pillar to the First Pillar. That is true, it is some but not all and that is the point that I wish to make to him. He also correctly identified the three gateways. The first, he said, was Schengen in which he says the UK faces a veto on each one. That is true in respect of existing Schengen measures but not in respect, as I have understood the position, in respect of new measures that billed upon the existing Schengen but certainly the hon Member as we have all known here for a long time in respect of the existing Schengen acquis the text that has been transferred from Schengen into the Community acquis then the UK faces a veto from Spain. Title 3A, I have explained to him that certainly the context in which the UK have only a limited veto and the reasons why she has only a veto for a limited period of time and the third gateway is the Third Pillar. The difference between Third and First Pillar is, as I am sure the hon Member knows, that the First Pillar are Community measures. The First Pillars are measures that emanate from the Community and are Community measures and they usually come out in the form of Council Resolutions or in the form of directives or in the form of regulations. They are the Acts of the Community as opposed to the Third Pillar which are not Acts of the Community. They are not Community measures which is why there is no need to include them in this Bill in the definition of Community Treaties. They are inter-governmental. In other words, each such measure constitutes a separate international treaty between 15 sovereign independent countries all of whom happen to be Member States of the European Community. The hon Member knows that as with all such international treaties there is no agreement unless everybody agrees. This leads me to the point that I think the hon Member is mistaken on. All these measures, some of which are now going to be transferred to the First Pillar under Title 3A, but before Amsterdam did that, all of these measures were Third Pillar and whilst they were Third Pillar, Spain has always had the veto. Therefore, the result of transferring it to the First Pillar is not to create for Spain a new right and a new power, because she always had that in respect of the whole range of issues, because the whole range of issues were in the Third Pillar and in the Third Pillar everything has always been by unanimity. Therefore, it is not true to say that in respect of any matter that before was in the Third Pillar, Spain has now acquired a new right and in respect of that matter we are not

worse off as a result. It is not true that Spain now chooses, and he emphasised the word "now", it is not true that Spain now chooses the bits of this that we can participate in because all these things were previously in the Third Pillar in which Spain always chose, if the hon Member wishes to so describe it, because Spain has always had the ability in the Third Pillar to say to the other Member States "well, I am not agreeing to this agreement unless the United Kingdom excludes Gibraltar" or "I am not agreeing to this Third Pillar inter-governmental agreement unless the United Kingdom agrees to include Gibraltar but without any competent authority rights". I make these points, Mr Speaker, because that is precisely what happened in the three agreements, the Eurodac Convention, the European Judicial Network and the Driving Disqualification Convention. These were inter-governmental agreements under the Third Pillar requiring unanimity as it has always done since Maastricht. Spain actually did not seek Gibraltar's exclusion from those measures. Spain did not say "I will veto this unless Gibraltar is territorially excluded, unless this Convention does not apply to the territory of Gibraltar". What Spain did and did from the beginning, except that the United Kingdom said that she was standing firm against for nine-tenths of the negotiation and then at the end gave in, what Spain was saying is "we will not allow the Community to enter into these three agreements if Gibraltar is included on terms that the competent authority for the implementation of these three measures in Gibraltar is the Gibraltar authority". So, for example, in the European Judicial Network Convention, Spain did not want the Supreme Court of Gibraltar to be one of the Courts with which Courts of other Member States could communicate. They wanted the communications in respect of Gibraltar to be with a High Court in England or with whatever Home Office authority..... and so on, in respect of the Eurodac Convention which as the hon Members will remember related to a common computer base of fingerprints for immigration asylum. The Spanish view was that the RGP and Gibraltar Immigration authorities could not be plugged into this computer and Gibraltar had to send its fingerprints to London where the Metropolitan Police or the Home Office or whoever does this in England. Similarly with driving licences, Spanish courts were not willing, Spain was not willing, that disqualifications in Gibraltar should be recognised and the Government of Gibraltar, with the full support of the United Kingdom Government throughout the negotiations said "look, why should Gibraltar accept this? This is a derogation from our constitutional autonomy in these areas. We do not know how many hundreds more such inter-governmental agreements there are going to be over the next umpteen years and if we give up our right to be competent authority in respect of Gibraltar on each of them the time will

come when there will be nothing left for the public administration of Gibraltar to do". The British Government agreed with that line and held firm and then at the eleventh hour the Home Secretary decided that these measures were far too important to allow to be lost for the whole Community simply because of the Gibraltar competent authority point and put it to me that the United Kingdom was going to accept language which not only did not provide for a competent authority for Gibraltar, which would have been bad enough, but that prohibited the United Kingdom Government from appointing a competent authority in that part of the UK Member State known as Gibraltar. I said to the British Government "I have my own interests in this matter which I am not willing to surrender but what I am surprised is that you are willing to allow foreigners to tell you what administrative arrangements you may and what administrative arrangements you may not make in respect of your overseas territory of Gibraltar". But the Home Secretary was intent on doing so and therefore the choices available to the Government of Gibraltar were either to agree to have the Conventions..... the hon Member knows that when the United Kingdom does international agreements they always ask or, in most cases, they ask the local Government whether we want to be included or not and inter-governmentals are not different in the EU. We were faced with the choice either of being included on terms that Gibraltar could not have a competent authority or to say to the United Kingdom "if those are the only terms upon which you are willing to include Gibraltar we would rather not be included" and we opted for the latter. The hon Member says that he is not aware that this had happened before thereby suggesting that somehow something bad for Gibraltar started to happen whilst I was Chief Minister which never used to happen when he was Chief Minister. Mr Speaker, the hon Member must know, and if he does not I am surprised and it bears out my opening remarks about which they giggled, but the hon Member must know that the three inter-governmental agreements that I have just described which were not extended to Gibraltar for the reasons that I have just described, were the first Third Pillar agreements entered into since Maastricht. It has never happened before because there has never been an opportunity for it to happen before, not because these things were done well by him and badly by me, it is because it is a new issue, it is because it is a new matter, it is because it is a new threat to Gibraltar which never used to materialise. I am surprised that the hon Members think that this point is completely irrelevant to the debate or are they just trying to make enough noise in the hope that this point will be lost in the cackle of giggles because this point is central to the complete incorrectness of the hon Member's statement. This has never happened before because this

is the first occasion upon which there was an inter-governmental agreement. Inter-governmental agreements were introduced in Maastricht. The first thing that Commissioner Gradin told me when I visited Brussels and visited her at her office were "I am very upset " she said "because there is no enthusiasm for inter-governmental agreements in the Justice and Home Affairs in the Community and I have been pulling and pushing and none of them have come through and this is going to be amongst the early ones". It is all very well for the hon Member to say "the only one I knew of before was the Airport Agreement". He must know that the Airport Agreement are First Pillar and that all these other ones are Third Pillar and it is very serious for Gibraltar to have been excluded from the Air Liberalisation, First Pillar ones, because those are Community measures, those are Community Acts and it is not that Gibraltar has not been excluded from anything until last year in these three inter-governmentals since we were excluded from the Airport Agreement. The Airport directives and regulations are under a completely different area of Community law in which Gibraltar is entitled to participate as part of the European Community law in which Gibraltar is entitled to participate as part of the European Community, because they are First Pillars, they are directives, regulations et cetera, as opposed to Third Pillar instruments in which the inter-governmental agreements Gibraltar has no Community right, in law, to participate.

HON J J BOSSANO:

Mr Speaker, I am surprised that he has not realised, in what he has said, that the reason why we are worst off is precisely the reasons that he has just given. Does he not realise that whilst it is true that Spain in the Third Pillar had a veto before and will continue to have a veto, that is true, and they exercised that veto in May 1998, Jack Straw had a veto in May 1998 and he chose not to exercise it. That is the point. He has just told us that what the Home Secretary said was "having held it up for so long..." not because there was a requirement under a protocol that said "you can only hold it up for a limited time", that did not apply because the United Kingdom, in the exercise of its political judgement, decided that getting agreement for the whole of Europe was more important than honouring its obligations to Gibraltar, decided that it should go ahead. The whole point is that if that was the case in May 1998 when the Home Secretary had a choice, he could have chosen to say "no, we are going to stand firm or we are going to hold it up". Then it must follow that we are worse off to the degree that things moved from the Third Pillar to the First Pillar which they are going to move because in the First Pillar he

will not be able to hold out indefinitely even if he has a mind to do so. As I understand it he has agreed that that is the position.

MR SPEAKER:

The give way situation is to clear a point, not to make a speech.

HON J J BOSSANO:

Mr Speaker, with all due respects I am trying to clear the point that the Chief Minister has said that I am wrong or mistaken or misunderstand or misinterpret when I say that we are worse off as a result of the change. I am pointing out that to me it is quite obvious, that I am worse off if I have a situation where the United Kingdom can stop something for ever but chooses not to, to a situation where it cannot stop something for ever even if it wants to and that is the change that comes about. It does not come about with absolutely everything but the point that he has made in drawing a distinction.....

MR SPEAKER:

I have got to call your attention. A give way situation is to clear a point and you are having a second speech.

HON J J BOSSANO:

No, I am repeating Mr Speaker.....

MR SPEAKER:

That is it, repeating, in a give way situation there can be no repeating.

HON J J BOSSANO:

But how can I clear up anything if you do not let me put the argument? We are debating a Bill which I think is very serious for Gibraltar, Mr Speaker, this is why I am here, to do that, that is what they pay me for, what do I do now, sit down?

MR SPEAKER:

No, no, you asked to clear a point. You have made a speech. That is not clearing a point.

HON J J BOSSANO:

No, I am sorry, I am not making a speech, as far as I am concerned the position that the Chief Minister has explained does not contradict what I am saying but I am not making a speech attacking anything he said. All I am saying is that for me what he has said is confirmation because he has told the House... he has given the example that the Airport Agreement of 1987 excluded us from a First Pillar measure. Title 3A are First Pillar measures.

MR SPEAKER:

I am not going to allow it any more.

HON J J BOSSANO:

We will do it at Committee Stage, probably then I will be allowed to do as much as I like when we come to the Committee Stage and we have to vote.

MR SPEAKER:

Sure, sure, those are the rules.

HON CHIEF MINISTER:

The hon Member is mistaken but before I tell him the principal reason why he is mistaken let me tell him that I also think he is mistaken in saying that we are debating a Bill that is very serious for Gibraltar. We are not debating a Bill that is very serious for Gibraltar, because whatever he thinks may be very serious for Gibraltar has been the case since the 17th June 1998 and does not arise from this Bill. Failure by this House to pass this Bill does not insulate Gibraltar from any of the serious things which he says are around the corner. The serious thing, if there is one, is not this Bill. He is mistaken, Mr Speaker, because he does not appear to be aware that under Title 3A, if the United Kingdom decides to participate, she has the same right as everybody else. The United Kingdom's limited veto, if that is what he wants to call it, is only limited to the circumstances in which, in effect, she is not going to participate. So, the position of the UK is the same as everybody else if she intends to participate. The suggestion implicit in what the hon Member is saying that other Member States have got further rights or

rights to keep the veto for a longer period of time than the UK if the UK indicates that she is going to participate in the measure is not correct, Mr Speaker. Let me explain to the hon Member, time is going to tell on the sort of things that the Foreign Secretary is reported in today's Gibraltar Chronicle, time will tell on such things as Schengen but time will not tell on such things as this because these are First Pillar measures and if the United Kingdom decides not to participate then the point becomes academic for Gibraltar because we would not be participating either. If the United Kingdom decides to participate, she will then not, if what has been the United Kingdom's position since the Airport Agreement, has been repeated, Gibraltar has not been excluded from any First Pillar measure since the Airport Agreement. I think we can agree on that. This will be the first exclusion of Gibraltar from a First Pillar measure, a Community measure, as opposed to an inter-governmental. Therefore, if the United Kingdom is going to participate in that First Pillar measure, the whole of the Member State United Kingdom is entitled to participate and that is precisely what I was asking the Foreign Affairs Committee to guard against in what he calls this reference to an assurance. I know that he has mentioned that to the Foreign Affairs Committee because they have raised it with me, Mr Speaker. If he looks at the page of my evidence there to the Foreign Affairs Committee, whenever it was that he and I gave evidence last year, he will see that in all those numbered paragraphs, one, two and three, were requests by me for vigilance on the part of the Committee. Can the hon Member see that that is the preamble? And when I said although we are assured that she will not be entitled to, it goes on to say "I would ask the Committee to remain vigilant..." what I was saying is "the United Kingdom says to me Spain is not entitled to demand Gibraltar's exclusion from a First Pillar measure". Spain has no entitlement to demand Gibraltar's exclusion from any Community measure, as opposed to a Third Pillar inter-governmental agreement but as we know that she has already done so once, in the case of the Airport Agreement, in other words, notwithstanding that Spain has no entitlement to demand it, the United Kingdom can still choose notwithstanding that Spain has no entitlement to demand it, as the UK can choose to exclude us from a First Pillar agreement as she did in the Airport directive which were First Pillar and without Spain being entitled to demand it, the United Kingdom nevertheless chose to do so, in that paragraph what I am saying is if he reads it correctly is that I am saying "although we are told by London, although we are assured by London that Spain has no entitlement to demand our exclusion please be careful in case HMG does another Airport Agreement on us and agrees to exclude us". I think he will see that that is what that paragraph, which I have not got in front of me but which I recall and I

looked at yesterday, says. Mr Speaker, I am quite happy to give way to the hon Member.

HON J J BOSSANO:

The point I am making without making any speeches, is that I do not need him to tell me, I know precisely that is what I told the Committee. I told the Committee that he had been given an assurance and that he had asked the Foreign Affairs Committee in November 1997 to be vigilant in case the assurance was not.....

HON CHIEF MINISTER:

No, no, Mr Speaker, herein lies his misreading of that, if he will allow me to interrupt him. I will give way to him again in just a second. The vigilance was not so that Britain would not breach an assurance that they had given me, that they would not do another Airport Agreement. There is a comma between assurance and the rest of it. What the United Kingdom assured me of is not that they would not do another Airport Agreement but that Spain had no entitlement to insist on Gibraltar's exclusion from a First Pillar measure. Then I said, "London having assured me that Spain is not entitled to insist on our exclusion, you Foreign Affairs Committee now be vigilant and make sure that London does not do so voluntarily as she did in the case of the Airport Agreement". That is the point. There is no assurance not to do another Airport Agreement, although if one takes the Foreign Secretary at face value in today's newspaper he is saying that he is not going to.

HON J J BOSSANO:

Mr Speaker, I have to say that the point about the new Title 3A is that in answer to a question in September 1997 the Chief Minister was making the same distinction although then he said that the fact that the United Kingdom wanted to join in Title 3A in a First Pillar measure from the beginning meant that Spain could in no way veto UK participation. The point that I made then and I am making now and I believe the latest position explained in the statements issued following what the Home Secretary had to say confirms that whereas the United Kingdom can take part as of right in the new First Pillar title 3A measures which could well be what was, until now, a Third Pillar measure, that is to say the Convention that he has mentioned could in fact become First Pillar as a result of this and we are out of them. I can tell the Chief Minister that in the Minutes of the last meeting of the Justice and Home Affairs

Committee discussion took place on the transition from Maastricht to Amsterdam in the areas of Title 3A measures which will cease to be Third pillar and will become First Pillar and, for example, the Brussels 2 Convention was one of those mentioned which was being discussed in May 1998 and which we were being left out of and which has not been finalised and it was mentioned on the basis that the only obstacle was the "Gibraltar problem" and the territorial applicability. The minutes are on Internet, anybody can see them. We do not get them because the Foreign Office considers they are still secret but if one has a computer it is okay. In the statements that were made it was said that although the United Kingdom has this right under Title 3A First Pillar, if in exercising the right to join... the very fine distinction that the Chief Minister draws between wanting to join and not wanting to join does not seem to have penetrated into the minds of the other Member States because the statement from the Commission says that if they opt to join but they are unable to get the unanimity of the partners, after a period the partners go on without them even though the UK wants to be in. That is the point I was making in 1997 when I put the question to him and he said there was a distinction between wanting to come in at the beginning and wanting to come in at a later stage. I believe that that should be clarified at this stage because the statements that have been made indicate that there is no such distinction, that is why I am making the point that I am making. I hope I am being helpful.

HON CHIEF MINISTER:

In any event it has got to be understood that the failure of the United Kingdom to agree with the measure has got to be failure to agree with some measure common to all the other parties. The hon Member apparently fears that into that category could fall UK's insistence that this should apply to Gibraltar as well. The others might lose patience with the UK and curtail her veto, not because the United Kingdom is holding out the frontier checks, or not because the United Kingdom wants this particular measure or that particular measure to be included or excluded or modified in the text. The hon Member fears that the same veto may be curtailed simply because although the United Kingdom agrees with the whole of the measure, the sticking point is Gibraltar's right to be included. Mr Speaker, I am told, I do not have any formal assurance, but I am told that that would not be the case because that would not go to the content of the provision. That would not go to the content of the measure but it remains to be seen. In a sense it remains to be seen how that is going to work in practice.

Mr Speaker, just to round off, I would just like to correct the hon Member, this is a convenient opportunity. If the hon Member remembers and in a sense this is the major political difference between us, although I accept that there is also another much smaller difference in terms of how these things are going to work in the detail, the hon Member wants, in his public statements, to give the impression that the Government is wrong and the Opposition was right. In other words, what they warned about back in June has turned out to be right. The hon Member said on television, for example, amongst the many inaccuracies in his latest television interview about which I will correct him in public as soon as I can find the time to sit down and answer him, but one of the ones that comes to mind is..... "the Chief Minister told us all in the European Movement AGM that we are secure, and we said and I said that we were not and he said that I was being alarmist and you see I have turned out to be right". The European Movement Annual General meeting was in May and the Amsterdam Treaty, particularly the things that went into it that we did not like, was in June. What I told the hon Members, not just the hon members, I was addressing the European Movement Annual General Meeting in May, before the Amsterdam Treaty, before the night of Amsterdam, was that the Government of Gibraltar had seen these difficulties, these potential difficulties, we had pointed them out to the British Government, the British Government had assured us that the position would be protected and then, notwithstanding that, and I said on the 27th or 28th of May, I said "on the basis of what we had found, on the basis of what we had pointed out to London and on the basis of what London had said to us is going to be the position that they are going to keep in the Treaty, we were secure". Remember that there had been several drafts published and that the position contained in the last draft the Government of Gibraltar had seen did not give Spain, for example in relation to Schengen, the veto and that is the position that we were aware of when Mr Cook and Mr Blair went off to Amsterdam with this draft under their arms which was okay. When they got to Amsterdam we all know what happened on the night in question. We can all speculate whether it was an accident or whether it was that they took their eye off the ball or whatever. The fact of the matter is that as neither I was there, nor would he have been there sitting in Amsterdam in the Summit Room next to the Prime Minister preventing him from agreeing at the eleventh hour something which was not in the last draft of the document, the last draft of the document was changed. It is not true that the situation was insecure on the night that I spoke at the European Union Annual General Meeting which was before Amsterdam. The insecurities crept in on the night of Amsterdam and what happened was that the basis upon which we had seen the Foreign

Secretary and the Prime Minister go off to Amsterdam, having left the point secured were destroyed by the ground that they gave wittingly, or unwittingly, on the night of the signature of the Treaty in Amsterdam on whatever day in June 1997. Therefore, the hon Member to claim authorship of a warning that I was explaining to them three days before the Amsterdam Treaty was signed of which issues they were not even then aware because they had not seen the draft of the Amsterdam Treaty, for the hon Members to claim authorship of the warning then... I take no consolation from who gave the warning or who did not give the warning, as far as I am concerned that is completely irrelevant but I think it is less than available to the Opposition Member to claim ownership of the warning and, worse still, to suggest that what may now happen is not precisely what the Government, not only had warned might happen, but invested a lot of time and effort with the British Government in the run up to Amsterdam Treaty signing to insulate and protect Gibraltar from. The fact that we are not insulated and protected from it is not due to lack of vigilance on the part of the Government of Gibraltar. It is due to the fact that the Government of Gibraltar was not sitting on Mr Blair's lap on the night of the Amsterdam Treaty to prevent him from putting pen to paper to a document which was markedly different to the one that existed three hours before that meeting started. I think that the hon Member even wearing his Opposition's hat and using every fact as it is legitimate for him to do in an attempt to bring the Government into discredit in the eyes of the electorate from the Opposition benches, even he cannot possibly blame the Government for lack of vigilance in those circumstances.

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 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 Dr J J Garcia
The Hon A Isola
The Hon Miss M I Montegriffo
The Hon J C Perez

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of this Bill be taken later today if we have time to do so.

Question put. Agreed to.

THE MERCHANT SHIPPING ORDINANCE (AMENDMENT)(PORT STATE CONTROL) ORDINANCE 1999

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance for the purpose of transposing into the law of Gibraltar Council Directive 95/21/EC as amended by Council Directive 98/25/EC and Commission Directive 98/42/EC concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions, (port State control) be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Ordinance implements Council Directive 95/21/EC as amended by Council Directive 98/25 and Commission Directive 98/42/EC concerning the enforcement in respect of shipping using Community ports and sailing into our waters. Mr Speaker, Opposition Members may recognise this as a Bill upon which they were working at

the time of the last Election. The Ordinance applies to ships which are not British ships calling at or anchored off Gibraltar and offshore installations. It provides for inspection of those ships to ensure they are complying with the various international conventions which they will find listed under the definition of "Convention" in Clause 2 of the Bill. Mr Speaker, under Article 5 of the directive there is no obligation upon Member States to inspect 25 per cent of ships calling into port at the Member State. Hon Members will see that the way that the proposed new section 132D, subsection (i) is drafted does not mean that we are going to inspect 25 per cent of the ships calling at Gibraltar because we are taking the view that what we need to do is to inspect such number of ships entering the port and to which this part applies as may be specified by the Minister and then it goes on to say "...and which will result in compliance in respect of Gibraltar with the obligation placed on the Member State United Kingdom". In other words, a fair allocation of the whole UK Member States, 25 per cent, Gibraltar's quota of that is going to be much fewer than 25 per cent of the ships visiting Gibraltar and that is why that option has been chosen. In addition, hon Members will note the provisions which I will not explain for reasons which I will happily communicate to them in confidence, but I would point out to them the provisions of section 132D subsection (v). Mr Speaker, that is important in connection with the bunkering trade.

The Bill makes provisions for the detention of ships which are found not to be in compliance with the Convention standards and as a requirement of the directive, and this is a matter that is of concern to the Government, but as a positive requirement of the directive, contains provision for the payment of compensation to ship owners whose ships are improperly detained using the powers of detention. Of course, the Government will be making it perfectly clear to the Captain of the Port who is the competent authority in this respect, to exercise caution and to make sure that ships are only detained when there is a clear case of breach because the potential in damages for detaining a ship engaged in trade, as hon Members know, is very, very significant. The Government will take care to ensure that there are guidelines in place to ensure that these powers are not exercised recklessly, not that Surveyors in the Port of Gibraltar have ever shown a tendency to exercise these or any other powers recklessly but now there is a large price tag attached to doing so it becomes particularly important that it should not happen in that way. There are rights of appeal provided for to the Supreme Court of Gibraltar and there are provisions also for the appointment, by the Captain of the Port, of duly qualified inspectors to carry out these tasks.

I commend the Bill to the House, Mr Speaker, which is an important part and apart from being an obligation of the directives it is an important piece of legislation to continue to be able to hold up the Port of Gibraltar as a responsible port complying with the highest international European standards of ship safety and contributing in a high standard manner to the maintenance of high standard of ship bearing and safety at sea which I am sure this House, and especially the Leader of the Opposition given his historical role in shipping trade unionism, will wish to see reflected in the laws of Gibraltar.

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

HON A ISOLA:

Mr Speaker, there are a number of questions that arise which have in part been referred to by the Chief Minister which relate to, not a confusion but certainly an overlap that there may appear to be now in the current provisions of the Ordinance and the Bill that proposes to amend that Ordinance. Section 116 of the current Ordinance has provisions for the Governor who appoints the Captain of the Port as the detaining officer to detain ships. There is no restriction there on nationality or anything else, it is simply on the question of safety of the hull of the ship and also materials being carried and also relates to the working conditions. It is interesting also that in Section 117 of the Ordinance is the section that this Bill refers to in respect of compensation. In fact the provisions for compensation for wrongful detention, if one wants to call it that, is already within the current Ordinance. What we are doing now is clearly opening the possibilities without going wrong to a much greater degree but I would like certainly to hear what the Government have to say in relation to Section 116 and how that overlap may be dealt with in the event of a ship being detained under which ambit it may have been detained and indeed on the question of appeal. I am not certain whether Section 116, although it must be, provides an appeal in the same format, certainly not in the same format as this one and there may be a little complication in that.

Mr Speaker, the difficulty with this Bill as indeed with the majority of Bills that are brought to this House dealing with directives, are the question of treatment of Gibraltar by other Member States. The Captain of the Port under this Bill becomes the National Maritime Administrator, the competent authority and it is he who appoints the inspectors. I do not

know what plans Government have as to how many inspectors we are going to need, bearing in mind the information the Chief Minister has given as to the way it will work, the application of Article 51 being part of a UK quota, but certainly they require to be extremely well qualified in accordance with the terms of the Bill in the Schedule. But the treatment of the certificates that our inspectors that are the competent authority, the National Maritime Administrator may give, is an important point because if Member States do not recognise the Gibraltar Certificate of the inspector here as that of a ship having been properly inspected and certified as being okay and meeting the requirements, that will exempt that ship for a period of six or so months unless there is something blatantly wrong with the ship in the intervening period from having to undergo another inspection. If other Member States do not recognise or accept the Gibraltar registration or the Gibraltar inspection that could lead to certain problems mounting up to the ships that are registered or visit Gibraltar. It may happen that the certificates are not recognised and it might consequentially bring some problems to ships that pass through Gibraltar and obtain the certificates.

We would also, Mr Speaker, be interested to learn whether this directive has been transposed in Spain or whether in fact this is one on the list that the Chief Minister has recently referred to on television as being outstanding implementation in Spain. Generally on the question of recognition of our certificates we would be interested to see if in fact any other Member State has applied for implementation of this, if Government have taken the initiative to see whether they will in fact be recognised which would rid us of many of the problems that may subsequently arise on implementation. Mr Speaker, as the hon Member has said this Bill does deal with important issues relating to safety, not only in terms of a ship but what it carries and in a place like Gibraltar which sees many thousands of ships passing through our port, it is important that we do have such standards in place as will protect not only the people working on the ships but the rest of Gibraltar as these ships carry some very dangerous substances. We will be supporting the Bill, Mr Speaker, but we would seek an indication in respect of the questions posed.

HON J J BOSSANO:

Can I add, Mr Speaker, in relation to this question of the recognition of Gibraltar as the competent authority, in Article 4 of the 1995 directive it says "the Member State shall maintain appropriate National Maritime Administration". We are quite happy to see the Captain of the Port

meeting the label of a National Maritime Administrator and that is what makes him the competent authority for the inspection of ships but of course there seems to be some contradiction between the system in which we aggregate the ships calling in our port with the ships calling in the other British ports in the United Kingdom and the fact that we have got a National Maritime Authority in Gibraltar which recognises the United Kingdom as a separate Member State because that is what we are doing in 132C(ii). We have got the Captain of the Port designated as the competent authority for the purpose of the directive which can only mean I suppose for the purposes of Article 4 of the directive and therefore if we designate that he is the competent authority under Article 4 it means that the competent authority of each Member State under Article 5 which has to carry out the number of inspections in the ships that enter its ports is in fact the Captain of the Port. I am not sure that we can do what makes a lot of sense which is to get a quota for Gibraltar and aggregate our ships with the rest of the United Kingdom ports and still be, as we are, required by the letter of the law of Article 5. If we are the competent authority then it is quite clear to me that the competent authority of the Member State Gibraltar is in fact the Captain of the Port because for the purposes of the law we are deeming Gibraltar to be a distinct Member State from the United Kingdom since we are treating the United Kingdom in that same section as a separate authority in a separate Member State which is the Maritime and Coastguard Agency of the United Kingdom and they have 25 per cent of the ships in their ports. There seems to me a contradiction between the practical application that we are being told is going to be adopted in how this is implemented and what we are actually legislating. I would also draw the attention of the Government to the fact that the competent authority under the provisions of Article 40 are those that are included in the Sirelac E Information System set up in St. Malo, France. I would like to know whether in fact the Captain of the Port is included in that system because that is how he is required to exist in order to function, in order to comply with his obligations under the directive. He transmits information and receives information from other competent authorities via that sort of clearing system. It is quite obvious that when Article 14 is talking about the competent authority it is assuming that there is a national central body which deals with national central bodies in other Member States because the competent authority of each state..... the directive requires the state to legislate to make provision so that the central competent authority gets the information from the port authorities. Here we have a situation where the port authority and the national competent authority are the same people so therefore in our case the information cannot be transmitted as if it was a British port

sending back information to the Maritime and Coastguard Agency which would make sense if we had a pooling arrangement but it is quite obvious from the way that the drafting of Article 14 of the original directive is put together, that the ports report to the National Maritime Authority. The National Maritime Authority then communicates the information to other competent authorities or receives information from other maritime authorities. I assume that that is something that has been considered but it seems that there is a discrepancy between the methodology described..... I must say although this may have been started in our time it was not something that actually was considered politically except that I know that discussions were taking place between the people concerned in the Port and the people in the United Kingdom as to how it would work in practice. I think the idea was that when we came to legislate we legislated in a way that was consistent with whatever arrangements were being discussed on the ground.

MR SPEAKER:

Before I call on the Chief Minister to reply I think we should congratulate him. We have had an electrical breakdown, in such a situation I am personally useless but he has fixed it.

HON CHIEF MINISTER:

Mr Speaker, the Opposition never give the Government credit for anything that it does, not even fixing the microphone system in the House.

Mr Speaker, the Hon Mr Isola, who has not yet returned to the House, made the point that there was already power of detention under section 116 of the existing Merchant Shipping Act, powers of detention which are indeed the ones that I used under this Bill. If the hon Member refers to the proposed new section 132(h)(ii) he will see that the powers of detention that are available are the very same powers of detention, indeed it mentions section 116. It says "using the powers of detention in Section 116 of the Bill". Therefore, there are no new powers, there is no new detention procedure. It is just that the existing powers of detention which already exist in the Merchant Shipping Ordinance are made available for the purposes of these new sections.

The hon Member was asking why the need for all these provisions given that they are already powers in the Ordinance and I think the point is that the powers have to be available in the context of and within the

regime specified in the directive rather than on the general basis, the limited basis, I am not familiar as I speak with the powers, the circumstances under which section 116 gives powers of detention for what sort of things and what the remedies of the parties are. Obviously the requirements are carefully laid down in the directive and the draftsmen obviously felt that the existing provisions of the Merchant Shipping Ordinance were not a sufficient compliance with the requirements of the directive. The Hon Mr Isola then said, "the Captain of the Port becomes the competent authority." Mr Speaker, the Captain of the Port is the competent authority in merchant shipping. The Hon Mr Isola used the phrase "Maritime Administrator". That is not the language used in respect of merchant shipping. The phrase "Maritime Administrator" is used in relation to shipping registration matters.

HON A ISOLA:

The phrase "Maritime Administration" is the wording in the directive.

HON CHIEF MINISTER:

Mr Speaker, the Captain of the Port is the statutory authority in Gibraltar in all matters of ship surveying, ship inspections and the application of international shipping standards in Gibraltar and that is not new. He has those powers under the Merchant Shipping Act. It is certainly true that these amendments to the Merchant Shipping Ordinance arise from a Community obligation but it does no more than add to a regime which already exists in which it is the Captain of the Port through his Port Surveyors, who exercise port state control functions, who exercise surveying functions, who exercise ship inspection functions under the existing regime for those functions as has always been contained in our Merchant Shipping. This is not the Captain of the Port becoming the competent authority. It is the Captain of the Port continuing to exercise functions of the sorts that he has always exercised under the Merchant Shipping Ordinance, which Ordinance is now being amended to reflect requirements of an EC directive, but that does not change the nature of the role of the Captain of the Port which he has always had.

The hon Member then made a point about the recognition of certificates. Mr Speaker, there he raises the whole issue of the politically-motivated challenge that Spain, but nobody else, makes to Gibraltar issued documents. Of course, one cannot say how this is going to work out in practice in relation to Spain. What is certainly true is that these are not the first certificates. This is not the first time that the Captain of the Port

obtains powers to issue certificates. The Captain of the Port is issuing trading certificates, indeed Certificates of Registration, let alone Trading Certificates, to British shipping registered in Gibraltar and has been doing that since we have had a Merchant Shipping Ordinance. Spain has never withheld recognition of shipping-related certificates, whether they be Registration Certificates or whether they be Trading Certificates, Health and Safety Certificates issued by the Captain of the Port but of course I cannot pre-empt when this issue might be added to the list of documents that they may wish to challenge. Mr Speaker, there is no question, as far as the Government are concerned, the consequences would be enormous for Gibraltar not issuing certificates unless all of the 15 Member States have agreed to recognise them. Even the Spanish authorities are constantly recognising certificates and documents issued in Gibraltar by competent authorities. For example, Driving Licences issued in Gibraltar or when the Health Authority issues a Form E111 in connection with reciprocal delivery of health service treatment. The Health Authorities are acting as the competent authority for Gibraltar in the context of that Community directive and therefore the appropriate administrative body in Gibraltar, whichever it might be, depending on the subject matter, is constantly acting as competent authority in the administrative sense in any number of measures and indeed this is what lies at the root of the whole issue. So, Mr Speaker, clearly we do not expect non-recognition of these certificates. There is no historical suggestion that shipping certificates will not be recognised and certainly other Member States have never shown an inclination not to recognise Gibraltar-issued certificates in this or any other matter. I cannot tell the hon member whether this particular directive has or has not been transposed in Spain. I did not recognise it on the list that I had in my hand on which they are under infraction proceedings. I can only suppose that they have done so, nor can I tell the hon Member whether they are complying or whether indeed anybody is complying with the requirement to inspect 25 per cent of ships that visit their ports. One does not see an awful lot of evidence of it and therefore it may be that they are not. Mr Speaker, I am grateful that the Opposition shares the Government's interests in the Port of Gibraltar maintaining the highest standards in relation to international shipping. This Bill reflects further progress on Gibraltar's part in that respect as indeed it is also reflected in the Government's policy in relation to pollution control where the Government are in the process of establishing in Gibraltar a sophisticated pollution response capability so that the port of Gibraltar, whether it is Registry matters, whether it be Port State Control matters, whether it be safety matters or whether it be in pollution control, will be a port of the highest European standards and the hon Members are aware

that we have commissioned a Port Study. Amongst the things that will emanate from that will be substantial investment in the port, for launch facilities and things of that sort, which I think will position Gibraltar as a modern European port which will have nothing to apologise to anybody about. I say that because I noticed for the first time in a rather undignified television programme recently about Gibraltar, this one that John Gomez participated in, although he did very well, but the programme itself is something of a spectacle, you know the one I mean, that somebody there said "...and you operate unsafe bunkering facilities". I do not know whether this is the latest addition to the Spanish Foreign Office manual that they now hand out to everybody that appears on radio and television debates, but certainly it will not be a line of approach which will give them any mileage because everyone can see that the port of Gibraltar is moving to standards of safety and compliance which has nothing to compare unfavourably with, with any Spanish port in this vicinity.

Mr Speaker, the Government of Gibraltar have been in close contact with the Maritime and Coastguard Agency. The aggregation point will take place in close consultation with the Maritime and Coastguard Agency with whom we have to discuss what a reasonable allocation for Gibraltar is. The other main point made by the Leader of the Opposition was this business of reporting. Mr Speaker, article 14(2) of the directive does not require the competent authority to be registered in this Sirelac E information system set up in St Malo, France. I had understood the hon Member to suggest that the competent authority had to be somebody who was registered as such in St Malo. That is not my reading or the draftsman's reading of Article 14 but the hon Member is right, that this directive requires a reporting back of information which then gets compiled into general Community information and that is taking place already and is intended to continue to take place under this directive through the UK. Gibraltar, I think it is an office of the Coastguard Agency in Southampton, if I am not mistaken, feeds in its shipping-related statistics into the UK and they include it in the UK's statistics when they report it back.

Mr Speaker, I do not see the contradiction that the Leader of the Opposition sees in this business of how this would work. He speaks about Gibraltar's obligations under the directive. Article 5 does not impose... and here we are in one of those areas of Community directive requirements where we are not talking about qualitative obligations but quantitative obligations. When one talks about quantitative obligations, in other words, thou shall inspect 25 per cent of shipping, this is not

addressed to Gibraltar separately from the UK. The directive imposes obligations, in the first instance, on the UK and Gibraltar is required to comply with those directives by virtue of that fact. The view has been taken, the hon Member is right. This formula was on the file and had been discussed between the Law Draftsperson in the hon Member's Government, with the Coastguard Agency, so this formula is not one that we have devised, it is one that we have selected from the two formulas that we found on the file from that time where I understand there was close consultation and I think that it is not a correct analysis to take the view that Gibraltar and the UK must be treated separately. The obligation is the UK Member State. The Community regards Gibraltar as part of the UK Member State for such purposes and therefore we envisage no difficulty and we have not been given any reason to believe that the Maritime and Coastguard Agency envisages any difficulty in the application of this formula. But let me say, Mr Speaker, for the comfort and satisfaction of those involved in this business that even if it were 25 per cent of our shipping, given the provisions of the sub-section that I have pointed out to the Opposition Members, not even that would be particularly onerous. In that sense the point is academic, it does not affect the extent to which this piece of legislation will impact in an adverse sense on the industry in Gibraltar.

I believe I have addressed, if not answered entirely to their satisfaction, all the points made by the hon Members except whether Spain has transposed and I can certainly find that out and report it back to the hon Members at Committee Stage, to whether Spain has transposed or not. I commend the Bill to the House.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today if there is time to do so.

Question put. Agreed to.

The House recessed at 4.45 pm.

The House resumed at 5.10 pm.

THE COMPANIES (TAXATION AND CONCESSIONS)(AMENDMENT) ORDINANCE 1999

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to amend the Companies (Taxation and Concessions) Ordinance so as to substitute the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette for the functions of the Financial and Development Secretary under that Ordinance be read a first time.

Question put. Agreed to.

SECOND READING

HON P C MONTEGRIFFO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the effect of this Bill is very simple and in fact adequately set out in the Explanatory Memorandum. What it does is to replace the Financial and Development Secretary with the Finance Centre Director or such other DTI public official as the Minister for Trade and Industry may designate in the discharge of the various functions under this Ordinance. This Ordinance, as Members may recall, deals with the important area of exempt company authorisations. The Government have resolved to move to the DTI the functions previously discharged by the Financial and Development Secretary with regard to exempt companies. The current supporting staff will also physically move to the DTI as part of this transfer of functions. The move is part of a wider transfer of functions which the Government have already announced. Responsibility for the grant of Qualifying Company Certificates will also be transferred and there is a Bill before this House to give effect to that as well. Subsequently, responsibility for the High Net Worth Individual and Relocated Executives Possessing Specialists Skills schemes will also be transferred and be undertaken from within the Financial Centre Division of the DTI. This is an important step for financial services. We believe it will bring together within the Government's Financial Centre Unit these important functions. It should create greater coordination and synergy and therefore give a better service. On a day-to-day basis one should add that little will probably change. The staff currently undertaking most of the functions with regard to exempt companies,

being transferred as they will to the DTI, will undertake most of that administration. But, of course, matters that require sensitivity or raise special considerations will, in the future, be dealt with by the Finance Centre Director or such other public official as shall be appointed by the Minister.

I take this opportunity, Mr Speaker, of thanking the Financial and Development Secretary for the functions he has discharged historically and indeed his predecessors. We expect that the legislation will come into effect probably some time in April or May when the full transfer of staff is effected and the premises to which they are being transferred, also fitted out. 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 one point that concerns the Opposition in respect of this Bill is the traditional roles that have been taken by the Minister of Trade and Industry in his Department and the Financial and Development Secretary in that there has always been a line between, if one likes, the marketing role and the licensing role. In transferring the responsibilities for issuing these certificates we see no benefit which can be achieved by putting into the domain of the marketing team, which is in effect what the Finance Services Director is, the same responsibilities for actually issuing the certificates. We will not be voting against the Bill, Mr Speaker. We will wait and see what happens and how it develops. Obviously it is a matter of Government to decide as to what they feel is best but certainly we believe there is a line between the marketing aspects and the issuing of the different certificates or licences issued, we believe that there is a distinction to be drawn there and for those reasons we will be abstaining on the Bill.

HON P C MONTEGRIFFO:

Mr Speaker, I think that the hon Gentleman has perhaps started off on a misconception and wrong footing. The Finance Centre Division of the DTI does not regard itself as primarily or exclusively a marketing division. It has a marketing function but it is, if anything, primarily a development and strategic unit. What we do there is much more than simply issue glossy brochures, under company private sector entities on marketing campaigns. What we have done over the last year and a half

in particular is bring together, within a Government structure, something that never existed before, namely a strategic and development function where we work towards specific changes of legislation, where the industry has a point of contact, we have legislation processed which is undertaken from the Centre. It is a strategic and development arm of the Government with regard to financial services. In that context it makes a lot of sense to bring into it one vital aspect of the centre which is part, historically in the Financial and Development Secretary's lap, but for no logical reason. There is no good reason why the Financial and Development Secretary should be the person charged with the statutory responsibility of deciding exempt and qualifying company structures. It is not a licensing role, let me say that. I will also dispute the hon Gentleman's description of what will be transferred as being a licensing function. The licensing function in terms of financial services is purely Financial Services Commission, that does not change, but this is the grant of fiscal benefits and that is really an administrative matter. A matter which is properly exercised in the context of the development of strategic view taken by the Government in a centre dedicated for that purpose rather than through a statutory officer which is not part of that process.

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

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

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

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

Question put. Agreed to.

THE DEPOSIT GUARANTEE SCHEME (AMENDMENT) ORDINANCE 1999

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to amend the Deposit Guarantee Scheme Ordinance 1997 to facilitate the recognition of the Gibraltar Deposit Guarantee Scheme in the United Kingdom, and to make adjustments to the Scheme be read a first time.

Question put. Agreed to.

SECOND READING

HON P C MONTEGRIFFO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill amends the Deposit Guarantee Scheme Ordinance 1997, in four ways all of which are largely technical.

Firstly, it provides that the UK be treated as a separate EEA State for the purposes of the Scheme. The original Ordinance required that branches of UK banks to form part of the Gibraltar scheme. This Bill would provide that branches of UK banks will, in the future, form part of the UK scheme. The Gib scheme will consist only of Gibraltar incorporated banks. The UK will now have to change its legislation in order to treat Gibraltar, for the purposes of UK law, as a separate state. This requires secondary legislation which the UK will have to pass and which will facilitate banking passporting into the UK.

Secondly, it provides for a confidentiality provision in relation to information given by banks to the Deposit Guarantee Scheme Board.

The third change it makes is that it provides for only one date of current conversion instead of allowing the conversion to be made on the date when a deposit becomes due in the case of term deposits. This will make life administratively simpler for the Board when it comes to calculate the value of deposits.

Finally, it changes the basis of the calculation of each bank's levy in the case of a default. The current calculation is based on the number of depositors with each bank. This system was approved by the Gibraltar Bankers' Association before the 1997 Ordinance was enacted. However, the Association now wish the liability to be worked out on a different basis, namely on the proportion of accounts which each hold rather than, as I say, with the number of depositors. This change will not affect the rights or level of compensation which a depositor is entitled to. It will only affect, as I say, the levy that each bank would be required to make in the context of a default.

The Government are happy to go along with what the Association wishes and propose to give effect to it by this Bill. These minor changes will enable the Scheme to be put into place in Gibraltar without further delay. 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 question I would ask here is, when the Bill came through in 1997 as part of a series of Bills to give effect to the passporting potential of the banking sector, the Minister has referred just now to the UK having to enact secondary legislation in order to enable this to happen. Is the Minister aware of a time scale within which that will be expected to happen? Secondly, whether the changes other than the one that he has referred to requested by the Bankers' Association, namely the system for determining the amount of money that will have to be paid into the pot by the respective banks in the event of a claim; other than that, are there any other items within the Bill that is being brought in as a result of that passporting process? Or are they all technical corrections or amendments to the Bill that were not foreseen at the time? The principal question really relates to the comment made as to the secondary legislation in the United Kingdom and what has changed since this original Bill came into the House to now in those arrangements on the passporting. It seems a little bit unclear and there

seems to have been a change and I would be interested to see what that is.

HON J J BOSSANO:

Mr Speaker, we have been told that in fact the first change is to treat the United Kingdom as a separate Member State and that therefore branches of UK banks are covered by the UK scheme. Is it that the UK banks here particularly wanted to be covered by the UK scheme, other than the local ones? And can I ask what does that leave in the scheme? Presumably, the other EU banks are already outside this and covered by the home state scheme. What is the secondary legislation of the United Kingdom that will need to be amended? In terms of the system of adjustment of compensation liability in section 5, given the point about who is in the scheme, when the Bankers' Association have come back, would the Minister not agree that it is really the people who are going to be in the scheme who should be consulted and not necessarily the whole of the Association where the bulk of them are presumably outside the scheme?

HON P C MONTEGRIFFO:

Mr Speaker, I shall answer the last point first. The GBA has been the point of contact with regard to this matter since the legislation was first contemplated. Therefore, the same point of communication has been maintained. There has been no suggestion to the Financial Services Commissioner as far as I am aware, that the consultation has been deficient as a result of that. The GBA have been and remain the voice of bankers in Gibraltar and that process is one that they are happy with and which we are happy with.

Dealing with the issue of the secondary legislation, the secondary legislation which has to be given effect to in the UK is secondary legislation to recognise Gibraltar as a separate Member State for the purposes of this scheme as to the purposes of banking passporting generally. Until that happens, banking passporting to the UK cannot take place. One of the matters that we have put to London is whether we could not in fact have an announcement that would allow banking passporting to other EEA states even whilst we are waiting for the legislation in the UK to go through with regard to the UK itself. We see no reason why an announcement for the rest of the EEA should be held up purely because access at present to the UK is not possible. Obviously, it is important in any event to try and seek some time scale

for the enactment of the secondary legislation. We have expressed some concern about delays on banking passporting generally. With the amendments to this scheme here we believe we have totally complied with every requirement put to us. There is this requirement with regard to secondary legislation which the UK raises in respect of their own part of the equation and the response has been as I have indicated effectively, frankly this should have been done well in advance of this position but if it has not been done, we have got the time scale for it but in any event there should be an announcement which allows us to passport into the rest of the EEA pending the UK legislation.

HON J J BOSSANO:

I obviously misunderstood. I took it to mean that there was secondary legislation which was already in existence which would be amended to incorporate the Gibraltar scheme. That is not the case. Is it then, therefore, that the UK has now confirmed that they do not require primary legislation for recognition of Gibraltar banks?

HON P C MONTEGRIFFO:

Probably, as the hon Member recalls, there was discussion for months, if not years, on this issue, whether indeed primary or secondary legislation would suffice to give effect to the very step which we are now discussing. The UK was persuaded that secondary legislation was appropriate and we therefore hoped that that would have speeded up the process significantly. It is basically legislation which is outstanding but which will be of a secondary nature.

Why was the Bill brought in in 1997 without the structure in place? I believe the answer to that is, but I would have to confirm it with the FSC to ensure there is no other new answer to this, but I believe the position was that we were keen to introduce the Deposit Guarantee Scheme as soon as possible and therefore in advance of the secondary legislation having been put in place in the United Kingdom we were prepared to make the UK branches participants in the Gibraltar scheme, albeit on an interim basis. Now that we are very close to getting the UK legislation passed, banking passporting for the UK in place, the moment is right to enact this legislation which will take out the UK branches, but that provision will not be possible to be brought into effect and will not bring in, I think it is section 2, of this Ordinance until the secondary legislation in the UK has been enacted. Who will be left in the Gibraltar scheme? Gibraltar banks will be left in the Gibraltar scheme, namely Gibraltar

incorporated banks. Branches of other EEA territories will obviously form part of the Deposit Schemes of the other territories, and of course there is a small pool of Gibraltar incorporated banks. Some of the international banks operating in Gibraltar do operate under a subsidiary structure, namely a Gibraltar incorporated entity rather than through a branch although there has been, on a number of occasions recently, hon Members might recall legislation brought to the House where activities had to be moved to a branch rather than to a subsidiary but, in a nutshell, what will be left in Gibraltar will be the Gibraltar incorporated banks. I think I have covered the points raised.

Question put. Agreed to.

The Bill was read a second time.

HON P C MONTEGRIFFO:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today if this is possible.

Question put. Agreed to.

THE INCOME TAX (AMENDMENT) ORDINANCE 1999

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to amend the Income Tax Ordinance so as to substitute the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette for the Financial and Development Secretary in the granting of qualifying certificates to companies and individuals 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 background to this Bill is identical to that in respect of the Companies (Taxation and Concessions) Bill which the House has just

dealt with. As in the case of the previous Bill it replaces the Financial and Development Secretary with the Finance Centre Director in the discharge of the duties under the Ordinance. The grant of qualifying company status in particular is a very important part of the fiscal incentives available in Gibraltar and in the Government's judgement it is proper and appropriate for those functions to be discharged by the Unit charged with development and strategic responsibility for financial services. 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, our reasons for abstaining are exactly as they were in respect of the Companies (Taxation and Concessions) Ordinance Bill and therefore there is nothing I wish to add.

Question put. The House voted.

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

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

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

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 later today if possible.

Question put. Agreed to.

THE ROAD TRAFFIC (WINDSCREEN TRANSPARENCY) ORDINANCE 1998 (AMENDMENT) ORDINANCE 1999

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to amend the Road Traffic (Windscreen Transparency) Ordinance 1998 be read a first time.

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the purpose of this Bill is to extend to taxis the exemption which has already existed in the law for omnibuses. When the Road Traffic (Windscreen Transparency) Ordinance was passed in this House last year certain category of vehicles were exempted. The type of vehicles which required exemption included ambulances and omnibuses. Taxis should have been included in this original list and this amendment corrects this. I wish to emphasise that the Government stands by the principle of banning darkened windows in private cars. This principle is in no way affected by this Bill which I commend to this House.

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

HON J C PEREZ:

Mr Speaker, just to say that whilst the amendment is welcome in the fact that there are practical problems with some other public service vehicles other than omnibuses, it seems to me that it creates a second problem which is whereas an omnibus generally has a long time in the service,

the taxi tends to change quicker and the problem that the owner of a taxi with a non-transparent back windscreen will now have, when he removes the vehicle from being a public service vehicle, there will be no one in Gibraltar to buy the vehicle from him and he will not be able to use it in a private capacity because obviously the only exemption that is being made is for the public service vehicles. Whilst welcoming it in that it remedies a practical problem, when the Chief Minister presented the Bill he said he wanted to go further than the EEC and we agreed with him in principle that if we could go further we would go further. It creates a second problem with that vehicle, once that vehicle stops being a public service vehicle and can no longer enter the market as a private vehicle in Gibraltar.

HON J J HOLLIDAY:

Mr Speaker, I take the point being made by the Hon Mr Perez. However, the decision by the Government to amend this Ordinance has been as a result of representations being made to us by the Taxi Association and obviously they are aware of the repercussions that could actually be developed once they try and sell the vehicle in the open market after it has ceased being a public service vehicle. Let me take this opportunity to inform the House that there are other problems which are currently being highlighted to the Government in a number of areas. These matters are currently being considered by the Attorney-General's Chambers and the Ministry for Tourism and Transport to see how these can be sorted out.

HON J C PEREZ:

Is the Minister referring when he says "other problems" to particular dealers who are receiving models with European Union specifications which have a particular density in the rear windscreen of the vehicle?

HON J J HOLLIDAY:

Mr Speaker, that is correct, that is one of the issues that is being considered also various individual cars who actually had tinted glass at the time of the transposition of the Bill. There are also some cars which are being manufactured with windows that do not comply with the Gibraltar legislation and these are areas which are now being the subject of consideration to see how these can be addressed.

HON J C PEREZ:

Would it not be convenient, given that the Government are considering this, to defer taking the Committee Stage of this Bill until consideration has been given to those issues so that if there are going to be more exemptions, which is something that Government are considering, we do it all at one stage and then the argument that I put to the Minister might not be valid because it might be that the Government might wish to move to EU specifications on the rear window or the windscreen.

HON J J HOLLIDAY:

This was something that was considered only a few days ago to see whether the Government would take a decision on this and delay this amendment but it has taken the view that there are currently taxis that are operating on the public highway as public service vehicles, which are unable to take their MOT certificates as a result of having these particular windscreens that do not comply with the current legislation and it was felt that it was better to at least legitimise those and then look at subsequent amendments when the other issues have been considered.

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 if possible.

Question put. Agreed to.

THE EMPLOYMENT (AMENDMENT) ORDINANCE 1999

HON J J NETTO:

I have the honour to move that a Bill for an Ordinance to amend the Employment Ordinance so as to bind the Crown retrospectively to the provisions of sections 78A to 78K of that Ordinance be read a first time.

Question put. Agreed to.

SECOND READING

HON J J NETTO:

I have the honour to move that this Bill be now read a second time. The main purpose of the Bill is to amend retrospectively, that is from the 24th June 1994, the Employment Ordinance so as to apply to the Crown the provisions of sections 78A to 78K of the Employment Ordinance. The Crown should have been bound by these sections in 1994 when directive 77/187 on collective redundancies and transfer undertakings was transposed into Gibraltar law. The directive does not provide for exemptions of the Crown and therefore the Crown is bound. If this is not done we are open to infraction proceedings for imperfect transposition. In the UK the Crown is bound by these provisions of the directive to the Transfer Undertakings, Protection of Employment Regulations 1981 now reflected in section 191 of the Employment Rights Act 1996. I commend the Bill to the House.

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

HON J L BALDACHINO:

Mr Speaker, one of the things that we do not want is the Government to be taken for infraction proceedings and therefore we will be voting in favour of the Bill.

HON CHIEF MINISTER:

Yes, Mr Speaker, it should be said that the Government are not bringing this in order to avoid infraction proceedings which have not been threatened. The Government are bringing this because this came to light during the recent situation involving the change in the MOD Defence Works Services Manager Contract in which there was a real risk that workers working for the Crown and the Crown in Gibraltar has two heads, there are two sections of it, there is the MOD part and there is the Government of Gibraltar part and the Government take the view that it is not fair that employees, either of the Government of Gibraltar or of the Ministry of Defence should be denied rights in relation to redundancy which their colleagues in the private sector enjoy. That is the reason why this Bill has been brought. This is not one of the things that is brought as other legislation is brought to the House because

infraction proceedings are threatened or because London has said we have got to do it or because Brussels has said we have got to do it.

HON J J BOSSANO:

I think the Chief Minister said "rights in relation to redundancy", is it that he meant something else? I cannot see that this is any right in relation to redundancy.

HON J J NETTO:

No, it was actually when it was brought in in 1994 under a Legal Notice that it amended both the collective redundancy of the principal Ordinance and also brought into it the question of 78A to 78K on the transfer of undertakings.

HON CHIEF MINISTER:

Mr Speaker, it does deal with redundancies in the context of transfer of undertakings, it is not just redundancies but also the preservation of rights in the context of transfer or undertakings which often involve redundancy or the threat of redundancy.

HON J J BOSSANO:

The redundancy rights under the Crown are without this already far superior to anything in the private sector which is covered by this. In fact, it is not that people are acquiring new redundancy entitlements or right or anything retrospectively to 1994 because if they are then I imagine they would also claim back to 1994?

HON CHIEF MINISTER:

Mr Speaker, it is principally in the context of rights on a transfer of undertaking. The rights of employees in a transfer of undertaking include certain aspects of redundancy, both during the transfer and within a period of time which I cannot now remember how long that is after the transfer. That is the context. This is not general redundancy rights in terms of number of weeks, this does not relate to such things as number of weeks of compensation entitlement which are dealt with elsewhere in the Bill. This is about preservation or rights in the context of a transfer of undertaking which raise both redundancy and non-redundancy points.

HON J J NETTO:

First of all I am grateful to have unanimity on both sides of the House for the passage of the Bill. I think that perhaps there is a slight confusion on both sides of the House in relation to this because when it was done in 1994, it was on the basis of transposing two different directives – one which was on collective redundancies on the basis of consultation and the other one on transfer undertakings. So all it is, on the basis of 78A to 78K that particular section was to do with the transfer undertaking and the manner of the transfer undertaking and obviously it was not included in the Crown. The other section, which was not under sections 78A to 78K, was amending the previous collective redundancies because the scope of the previous directive was not wide enough. Basically what I am saying is that we are talking about clause 78A to 78K on the transfer undertaking in order to bind the Crown but not to be confused under the Legal Notice of 1994 which dealt with the two issues.

Question put. Agreed to.

The Bill was read a second time.

HON J J NETTO:

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

Question put. Agreed to.

THE MEDICAL AND HEALTH (AMENDMENT) ORDINANCE 1999

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 98/63/EEC and to effect 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 Bill has two purposes. In the first place it is the transposition of a European directive by the addition of specialisations in one of the Schedules. Specialisations which entitle the holder to register as a medical practitioner under the Ordinance. The second aspect of the Bill is to correct errors that have been noticed by the Legislation Unit in relation to the principal Ordinance passed in 1997, essentially to achieve consistency between the description of medicinal product and article by deleting "article" and inserting "medicinal product". I commend the Bill to the House.

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

HON MISS M I MONTEGRIFFO:

Mr Speaker, just to say that we voted in favour of the Medical and Health Ordinance in 1997 and we believe that there is nothing controversial in the amendments contained in this Bill.

Question put. Agreed to.

The Bill was read a second time.

HON K AZOPARDI:

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

Question put. Agreed to.

THE ANIMAL EXPERIMENTS (SCIENTIFIC PROCEDURES) ORDINANCE 1999

HON K AZOPARDI:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar Council Directive 86/609/EEC on the approximation of laws, regulations and administrative provisions of the Member States

regarding the protection of animals used for experimental and other scientific purposes and to prohibit public displays of regulated procedures and the use of neuromuscular blocking agents in the course of such procedures 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 86/609/EEC as I mentioned when I first introduced this giving effect to Community obligations on the approximation of laws and administrative procedures on experimental and scientific methods used and the purposes to protect animals. It prohibits public displays of regulated procedures and the use of neuromuscular blocking agents in the course of such procedures. I am not aware that animals have ever been used in Gibraltar for experimental and other scientific purposes and it may well be the case, certainly my hope, that no one will ever have any future plans to do so. Nevertheless, it is a Community obligation to transpose this directive and in any event useful to make the law clear in this field for the future. Perhaps it is useful for the House if I just outline the basic purposes and highlight certain sections. Clause 4 of the Bill is in particular important since it defines the experimental or other scientific procedures to be applied to protected animals which may have the effect of causing that animal pain, suffering, distress or lasting harm. Clause 5 makes it a requirement for the person to hold a personal licence. Clause 7 provides for the grant of project licences which set out the programme of work for specified regulated procedures to animals of specific descriptions at a specified place or places. Clause 8 makes it a requirement that no place shall be specified in a project licence unless it has been designated by a certificate issued by the Minister under that clause. The breeding of protected animals is prohibited by Clause 9 unless the place has been designated by a certificate issued by the Minister as a breeding establishment. Before granting a licence or certificate the Minister will consult an inspector appointed under the Ordinance or an independent assessor of the Animals' Procedure Committee set up under the Ordinance. Mr Speaker, provision is also made for the variation or revocation of licences or certificates and the suspension in case of urgency. Representations may be made to the Minister in such instances. There are also clauses allowing for the re-

use of protected animals and for the killing of animals at the conclusion of regulated procedures. Schedule 1 sets out the appropriate methods of humane killing. There are also provisions protecting confidential information, granting power of entry and regarding the need for consent by the Attorney-General before proceedings for an offence are brought under the Ordinance. 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, with the Chief Minister resting in the Ante Room I do not believe that this Bill is going to lead to any heated controversy. Also, I do not think we are in danger of any infractions against this Bill since we do not indulge in any way in animal experiments, however, this is one more of these Bills which is not relevant to our community which we have to keep on putting through and which I presume is a rather costly affair. My other regret is that in showing compassion for animals we seem not to include the poor fish among our coasts. Nevertheless, of course, we do support here the noble intentions of this Bill and we will support it.

HON K AZOPARDI:

Mr Speaker, I know that the hon Member enjoys baiting the Chief Minister but he should be aware that he is not resting in the lounge but doing an interview on the White Paper issued by the Foreign Secretary which I think is a substantially important matter to which he should be addressing his mind and, quite correctly, not addressing his mind to humane killing of protected species in relation to which scientific procedures are not conducted in Gibraltar. I end on this note, fish, Mr Speaker, apparently were not seen fit to be protected by this directive.

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 be taken at a later stage in this meeting.

The House recessed at 6.22 pm.

The House resumed at 6.30 pm.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

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

1. The European Communities (Amendment) Bill 1999;
2. The Merchant Shipping Ordinance (Amendment)(Port State Control) Bill 1999;
3. The Companies (Taxation and Concessions)(Amendment) Bill 1999;
4. The Deposit Guarantee Scheme (Amendment) Bill 1999;
5. The Income Tax (Amendment) Bill 1999;
6. The Road Traffic (Windscreen Transparency) Ordinance 1998 (Amendment) Bill 1999;
7. The Employment (Amendment) Bill 1999;
8. The Medical and Health (Amendment) Bill 1999;
9. The Animal Experiments (Scientific Procedures) Bill 1999.

THE EUROPEAN COMMUNITIES (AMENDMENT) BILL 1999

Clauses 1 and 2 and the Long Title

Question put. The House voted.

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

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

For the Noes:

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

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

THE MERCHANT SHIPPING ORDINANCE (AMENDMENT)(PORT STATE CONTROL) ORDINANCE 1999

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

SCHEDULE 1A

HON CHIEF MINISTER:

Mr Chairman, the Hon Mr Isola asked, during the debate on the second reading, whether Spain had transposed the directive and I undertook to find out for him. The hon Members will have noticed that the Bill transposes the original directive which dates back to 1995 and that there are two 1998 amendments to it. In so far as it relates to the 1995 underlying directive, all Member States, except Belgium and Italy, have transposed it. The cases of Belgium and Italy have already been referred to the European Court of Justice by the European Commission. They are beyond the 169 Proceedings and they are now before the Court. Austria has not transposed but on the basis that they are a land-locked country, an argument that will appeal to the Leader of the Opposition, and transposition of the directive is not therefore required – rather like his fresh water fish rivers. In so far as it relates to the amending directive, the hon Members will be delighted to know that having cleared the backlog of directives, we are now leading the way because in so far as the two amending directives are concerned, the deadline for EC directive 98/25 was the 1st July 1998. However, this was extended to 1st January 1999. So far, and this was towards the end of

last year, so others may have done so, but I can say that as at the 22nd September 1998, only Germany had transposed the amending directive 98/25. As at the 22nd September 1998, no Member State had informed the EC Commission that it had transposed 98/42. Those amending directives introduced relatively minor amendments to the underlying directive and we thought that it would not be a profitable use of administrative or legislative or parliamentary time to transpose the original directive and then wait and come back and do what are two relatively minor amendments so we chose to transpose all three at the same time and get the two 1998 amendments under our belt.

HON J J BOSSANO:

The last one the Chief Minister mentioned which he said no one had notified, does that mean that the UK itself has not transposed it yet?

HON CHIEF MINISTER:

As at the 22nd September 1998, they had not notified. There is often a delay between doing it and telling the Commission that it has been done, so subject to that being the case, which is only a possibility, certainly by the 22nd September the UK had not notified the Commission that they had transposed it, the 98/42 one of the two amending directives.

Schedule 1A was agreed to and stood part of the Bill.

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

THE COMPANIES (TAXATION AND CONCESSIONS)(AMENDMENT) ORDINANCE 1999

Clauses 1 and 2 and the Long Title.

Question put. The House voted.

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

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

ABSENT FROM THE CHAMBER: The Hon R R Rhoda
The Hon T J Bristow

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

THE DEPOSIT GUARANTEE SCHEME (AMENDMENT) ORDINANCE 1999

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

THE INCOME TAX (AMENDMENT) ORDINANCE 1999

Clauses 1 and 2 and the Long Title.

Question put. The House voted.

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

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

ABSENT FROM THE CHAMBER: The Hon R R Rhoda
 The Hon T J Bristow

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

**THE ROAD TRAFFIC (WINDSCREEN TRANSPARENCY)
ORDINANCE 1998 (AMENDMENT) ORDINANCE 1999**

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

THE EMPLOYMENT (AMENDMENT) ORDINANCE 1999

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

THE MEDICAL AND HEALTH (AMENDMENT) ORDINANCE 1999

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

**THE ANIMAL EXPERIMENTS (SCIENTIFIC PROCEDURES)
ORDINANCE 1999**

Clauses 1 to 28, Schedules 1 to 3 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 European Communities (Amendment) Bill 1999; the Merchant Shipping Ordinance (Amendment)(Port State Control) Bill 1999; the Companies (Taxation and Concessions)(Amendment) Bill 1999; the Deposit Guarantee Scheme (Amendment) Bill 1999; the Income Tax (Amendment) Bill 1999; the Road Traffic (Windscreen Transparency) Ordinance 1998 (Amendment) Bill 1999; the Employment (Amendment) Bill 1999; the Medical and Health (Amendment) Bill 1999; the Animal Experiments (Scientific Procedures) Bill 1999, have been considered in Committee and agreed to without amendments and I now move that they be read a third time and passed.

Question put.

The Merchant Shipping Ordinance (Amendment)(Port State Control) Bill 1999; The Deposit Guarantee Scheme (Amendment) Bill 1999; the Road Traffic (Windscreen Transparency) Ordinance 1998 (Amendment) Bill 1999; the Employment (Amendment) Bill 1999; The Medical and Health (Amendment) Bill 1999; and The Animal Experiments (Scientific Procedures) Bill 1999; were agreed to and read a third time and passed.

The European Communities (Amendment) Bill 1999.

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 Dr J J Garcia
	The Hon A Isola
	The Hon Miss M I Montegriffo
	The Hon J C Perez

The Bill was read a third time and passed.

The Companies (Taxation and Concessions)(Amendment) Bill 1999 and the Income Tax (Amendment) Bill 1999.

The House voted.

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

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

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

The Bills were read a third time and passed.

PRIVATE MEMBERS' BILL

FIRST AND SECOND READINGS

THE BBV BANK ORDINANCE 1999

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 BBV Privanza (Gibraltar) Limited to BBV Privanza International (Gibraltar) Limited 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, BBV currently has two banks licensed in Gibraltar under the Banking Ordinance, namely BBV Privanza (Gibraltar) Limited and BBV

Privanza International (Gibraltar) Limited. Both banks conduct business from the same premises, they share the same staff, they have, essentially, a doubling up arrangement whereby the two separate legal entities share the same resources. BBV Gibraltar conducts the on shore side of the business. BBV International conducts the offshore side of the business. Following a rationalisation of its international operations, BBV has decided to streamline its banking operations in Gibraltar. This, in essence, will involve all of its business in future being conducted through one corporate entity. The transfer of the business of BBV Gibraltar to BBV International is what this House has been asked to approve by way of Private Members' Bill. The House should note that the Bill follows exactly the text of the ABN Amro Bank Ordinance which was passed by this House not too long ago. The Ordinance will transfer the entire business and undertaking of BBV Gibraltar to BBV International so that, following the transfer, BBV Gibraltar may be liquidated. BBV International will conduct both the domestic and international business through the single entity on a split tax basis. The fundamental section of the Ordinance is section 2 which gives effect to the transfer of the undertaking of BBV Gibraltar to BBV International. This transfer is to take effect on the 1st April 1999. The Ordinance ensures that the rights of third parties and property transferred are fully preserved as if the two banks were one in law except for certain excluded property pursuant to section 4. The Ordinance also ensures a continuation of matters such as legal proceedings and the basis of taxation currently applicable to the various activities of BBV Gibraltar and BBV International. Mr Speaker, there will be no change in staff numbers as a result of this restructure. BBV Gibraltar will be transferring all its employees to BBV International on the same terms and conditions under which they are currently employed. The restructure will, however, ensure that BBV will continue to operate from Gibraltar on a more streamlined basis and it is expected that the restructure will therefore create new business opportunities for BBV. I commend the Bill to the House.

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

HON J J BOSSANO:

Mr speaker, I think this raises slightly different issues from the other two Private Members' Bills that the Minister brought on the previous occasions. This was part of an international restructuring in the first, which was the NatWest Bank, which was in fact that it was being brought under the headquarters offshore and in the other one I think it

brought under the headquarters offshore and in the other one I think it was a Dutch bank. This, I take it, is a purely local thing in that they have got two banks here and the reason why they had two banks here was because they were not permitted to do the two activities with the same bank. There are local banks that have been here for a long time, going back to the time when there was an A and a B licence. They are paying tax on the whole of their profits, on the whole of their business, including their offshore business. If we are going to have this bank now being able to make a tax return in which part of its profits are as a qualifying company which presumably is what the international one was and part of its profits as a domestic company, what is there to stop other people wanting the same treatment?

HON P C MONTEGRIFFO:

Mr Speaker, the reasons motivating this move are not just local, there is a local dimension to it, but as I did indicate in my address, it is part of an international restructuring so it is not as though this is purely a local situation. But the most substantive point the hon Member makes which is the degree to which this opens the floodgates, the degree to which this will make less taxable activity currently more taxable, let me put his mind to rest. The Bill makes provisions for the same tax to be paid in respect of the domestic business as is currently the case. The BBV International is in fact not a qualifying company but an exempt company and BBV Gibraltar is a normal Gibraltar company paying 35 per cent tax. The new arrangements will indeed keep the same tax situation in respect of those two different parts of the business so there is no tax loss to Gibraltar in terms of the two segregated cells. He is right that other banks in Gibraltar that historically have been set up in Gibraltar as a normal Gibraltar company have sought in the past to move towards part of that business being taxed on an offshore basis and, of course, their argument has been pretty strong if one then considers that others coming in subsequently and have been afforded the same position. That is not the case here at all. Here the tax position with regard to the onshore and the offshore will remain unaffected and indeed there is a specific provision of the Bill which I can point the member to and that, Mr Speaker, is sub-section 7(vii)(b) which essentially ensures that the same tax be paid on the onshore subsequently, as has been the case in the past, and the same tax to be paid on the offshore as has been the case before this restructure, so there is no change to the tax arrangement.

HON J J BOSSANO:

The point that I was making was that there were two separate banks because that was the requirement in order to get the tax exempt licence, they have to have a separate entity and when other people made a point about it, the reply was "if you want to have a tax exempt bank for your offshore business, set up another one". Surely, that argument will no longer be tenable.

HON P C MONTEGRIFFO:

Mr Speaker, as the hon Member knows, that argument has been had and determined quite some time ago. This is not the first bank that is going to have a dual tax status. I forget which the first one was but certainly the two that we have brought to the House, at least in the case of ABN Amro has that structure and had it for some time ago. This is not charting any new territory. A decision was taken before we came into Government, I think. The Member may not himself recall it but I can tell him from my life in the previous world that before coming into Government a banking institution did acquire a dual tax regime on the lines of what is now envisaged.

Question put. Agreed to.

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

Question put. Agreed to.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

I have the honour to move that the House should resolve itself into Committee to consider the BBV Bank Bill 1999, clause by clause.

Clauses 1 to 11 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 BBV Bank Bill 1999, has been considered in Committee and agreed to without amendments. I now move that it be read a third time and passed.

Question put. Agreed to.

The Bill was read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that this House do now adjourn to Friday 9th April 1999 at 3.00 pm.

Question put. Agreed to.

The adjournment of the House was taken at 7.05 pm on Thursday 18th March 1999.

FRIDAY 9TH APRIL 1999

The House resumed at 3.05 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 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 Environment and Health

The Hon A A Trinidad – Attorney-General (ag)

The Hon T J Bristow – Financial and Development Secretary

OPPOSITION:

The Hon J J Bossano – Leader of the Opposition

The Hon J L Baldachino

The Hon Miss M I Montegriffo

The Hon A J Isola

The Hon J J Gabay

The Hon J C Perez

The Hon Dr J J Garcia

ABSENT: The Hon J J Holliday – Minister for Tourism
& Transport

IN ATTENDANCE:

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

OATH OF ALLEGIANCE:

The Hon Albert Andrew John Trinidad took the Oath of Allegiance.

MR SPEAKER:

Hon Mr Trinidad I welcome you to the House. I am quite sure the Members too, although this is only a first occasion, maybe we will see you on some other occasions.

DOCUMENTS LAID

The Hon the Chief Minister moved under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the laying of documents on the Table.

Question put. Agreed to.

The Hon the Chief Minister laid on the Table the Revision of the Laws (Supplement No. 2) Order 1999.

Ordered to lie.

The Hon the Financial and Development Secretary laid on the Table a Statement of Consolidated Fund Reallocations approved by the Financial and Development Secretary (No. 5 of 1998/99).

Ordered to lie.

MOTIONS

HON CHIEF MINISTER:

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

Question put. Agreed to.

HON CHIEF MINISTER:

I beg to move the motion standing in my name and which reads that: "This House does confirm the appointment by the Chief Minister, pursuant to Section 3(2) of the Public Services Ombudsman Ordinance, of Mr Henry Pinna as the Ombudsman for public services for all the purposes of that Ordinance with effect from Monday 19th April 1999".

Mr Speaker, as all but one of the Members of this House will recall when we discussed the terms of the Ombudsman Ordinance, those of us that were in the House debating the Bill recall that this is a vanilla flavour standard type of Ombudsman regime. That it contains in favour of the Ombudsman really very substantial powers in keeping with the sort of powers that he has in the other jurisdictions from which we drew our legislation. He has very wide powers of investigation and the same powers as the Supreme Court, indeed has, to summon the presence of witnesses and the production of documents before him and indeed to put questions to Ministers and generally powers which will give the Ombudsman every opportunity and every facility to investigate whatever matters he considers need investigating. At the time I said that it was important to find somebody who would command widespread respect in the community for independence of mind and independence of action. Having made the choice of Mr Henry Pinna I then consulted with the Leader of the Opposition and I am delighted to report to this House that the Leader of the Opposition expressed that he was content with the

nomination and therefore I think it is getting the office of Ombudsman in Gibraltar to the very best possible start as that indication from the Leader of the Opposition to me would appear to suggest. We are able to confirm the appointment that has been made unanimously in this House.

I believe that Henry Pinna has been a very good choice, naturally, otherwise he might be entitled to question why I had done it, but I think that he is a very good choice because not only will he enjoy widespread respect which I think would have been sufficient, I think Henry Pinna and the appointment of Henry Pinna will enjoy as near to universal respect as it is possible to get in this community. Mr Speaker, his reputation precedes him, his reputation as a tireless and dogged campaigner for causes that he regards to be just with integrity and with perseverance, his reputation for that precedes him. His record of public service in the past precedes him, not just in positions and activity within the Trade Union movement but indeed in a number of voluntary service organisations, most recently Action for Housing, where I think Henry Pinna has demonstrated beyond all possible doubt his commitment, unselfishly to give of his time in support of what he considers are fellow citizens in need of support from others. I believe that the people of Gibraltar will warmly welcome confirmation of this appointment because I think everyone will recognise in Henry Pinna the qualities to which I have referred.

Mr Speaker, the job of Ombudsman is not an easy one. I think the experience of Ombudsmen in other jurisdictions shows that it is a difficult post. The smaller the community the more difficult I think the post is because there is much more direct access. There is much more personal contact. The Ombudsman will have sufficient staff and sufficient resources, independent staff and independent resources, to enable him to do his job properly and as the Government intended when it introduced this legislation giving the office of Ombudsman these powers. He will have an appropriately located office in the centre of town which will make it accessible to ordinary citizens with the greatest amount of convenience but, of course, Mr Speaker, I think it is worth pointing out that the Ombudsman is not a Court of Appeal. I think it is important that people appreciate this. It is not the job of an Ombudsman to replace his judgement for the judgement of Government. It is the job of the Ombudsman to root out in all corners of the administration, both public and private, where it might be found instances of administrative improprieties, instances where the citizen has not had the treatment, the consideration, the courtesy that he is entitled to when dealing with the administration. Instances, were applications and things of that sort may

not have been pursued with the rigour, with the expedition and with the care and consideration that people are entitled to regardless of what the outcome of that application might be which will not always be favourable to the citizen and, of course, the fact that the outcome is not favourable to the citizen may, but will not necessarily be, because there has been administrative mal-administration and the Ombudsman will have the task of distinguishing between those two types of situation and I have no doubt that in Henry Pinna we shall all be able to agree with there is an Ombudsman who will need and who will know how to be fair and objective to both sides, bearing in mind that this is not just a Government in terms of the public service, that the Ombudsman Ordinance extends to many private sector companies delivering public sector type services, telephone companies, electricity utility, companies of various sorts, Government contractors of various sorts, managers of public facilities like gardens and terminals and things of that sort. The Ombudsman will not be dealing with the Government. He will be dealing with all that range of bodies in the Schedule and I have no doubt that the task of fairness and objectivity will come easily to Henry Pinna who I have no doubt will have the courage to pursue just causes but equally will have the courage to support the administration, to support the provider of services in the private sector when the case warrants him to do so.

Mr Speaker, hon Members will recall that under the terms of the Ordinance the question of the financial resources available to the Ombudsman is something that this House has got to approve by resolution and at the next meeting of the House I shall be bringing in a resolution for consideration, debate and agreed adoption by this House as to the extent of the financial resources that should be available to the Ombudsman for him to perform this service.

I commend the appointment to the House for confirmation.

Question proposed.

HON J J BOSSANO:

Mr Speaker, the Chief Minister is correct in assuming that we are going to be supporting the motion. I think it would certainly have been a bad start for the Ombudsman if the appointment had been made by one side of the House. We took the view, when we supported the Bill, that although we did not necessarily agree with the definition of how well drafted it is or how good the powers are or all the things that can be

done, we thought it ought to be given the opportunity of being tested in practice and then we would see whether it meets the needs that the Government must believe exists otherwise it would not be creating this.

Certainly, I can say that I have known Henry personally for many, many years, going back to 1970 in the Union and in Action for Housing. We thought in Government that he could make a positive contribution to protecting the interests of people who had grievances in relation to housing by having him sitting in the Housing Allocation Committee. To that extent, the experience that he has got, both in the union and in defending citizens with grievances in relation to housing will probably stand him in good stead. I would not be at all surprised if he finds the same people with the same problems appearing when he is the Ombudsman. I think the job is not going to be an easy one and therefore we certainly support the motion and wish him every success in tackling whatever problems are brought to his attention and redressing them favourably, obviously in the interests of the people that approach him because irrespective of the technicalities that may be involved, certainly if it were to be the case that there is a consistent sequence of cases where the Ombudsman rules that there is no case to answer it is going to be difficult to get anybody to believe that the Ombudsman was either needed or that as structured is capable of meeting whatever need there may be in the community. I am not very sure, when the Chief Minister said he would be able to question Ministers, in what context he can question Ministers if in fact what he is questioning is not wisdom of the policy which he cannot do but, and I accept it is not the role of the Ombudsman to decide what the policy of the Government should be, that is the role of the electorate in a General Election, if they do not like their policies, they do not vote for them, but presumably what the Ombudsman has to look at is whether there has been an administrative action which does not appear to tie with what the provisions of the law are. If there is a policy which is in conflict, as sometimes happens, then presumably the Ombudsman can point out that for the Government to pursue the policy that they are pursuing something would need to be done to change the law and I think it is only in that context that I can see that he can reflect on the wisdom of the policies of the Government of the day in any area, because if the policy is reflected in the law then the public servant is there simply to make sure that the law is carried out as it is passed by this House.

We will have to continue with the view that once he is set up, once he has got the office running and once he is working and looking at grievances we will see how adequate the machinery is and indeed we

will see what are the kind of problems that are brought to his attention. I think it would be only reasonable that we should revisit the scenario once he has had an opportunity of trying to make it work. I had a long chat with Henry about it before this meeting of the House and certainly he gave me the impression that he feels he has got to learn as he goes along in developing the implementation of what is being asked of him by this House because, essentially, we are giving him a job to do, we are appointing him and we are asking him to do it and I think, knowing him as I do, he will certainly do his best to satisfy what we ask of him.

HON DR B LINARES:

Mr Speaker, I would like to say that the appointment of Henry Pinna to this post of Ombudsman fills me with a particular personal satisfaction, if I may say. It is some thirty years ago that Henry and I walked together as we took the first steps in what could be called perhaps social awareness. We used to call it then "concientisacion", using the exciting jargon of the Latin American liberation movements. These were the late 60s and the early 70s and we were both militants. I suppose the politically correct word nowadays is "activists" in an international youth movement, the Young Christian Workers, which I dare say shook with some stridency perhaps but also with youthful idealism the establishment of the time. That is one feature, Mr Speaker, if I may on the YCW which I think is particularly relevant to Henry Pinna's appointment today. The educational thrust of the movement was essentially an educational youth movement was well expressed in a maxim: See, Judge, Act. I believe this dialect, even today, would serve Henry Pinna in good stead in his challenging task ahead. See, Judge, Act. See stands for empathetic listening, sensitive observation and objective enquiry. Judge stands for incisive and fair assessment of human and social issues. Act stands for fearless commitment in defence of individual rights, correct practice and rightdoing. I wish Henry Pinna, Mr Speaker, every success in opening up for the people of Gibraltar renewed opportunities to vindicate their individual rights as citizens. After all, that is what he has been doing since the 60s and the 70s in one way or another and I want to assure him with my own personal support.

HON J J NETTO:

Mr Speaker, I would also like to make a very small contribution. Just as my hon Friend the Minister for Education, I have known Henry for many years. I definitely know the strength of his convictions. In his role both in

Action for Housing and in defending the underdog he has never ever wanted to gain any personal, political gain out of that. I am completely convinced that the role he will play will be a very positive one but referring to one particular point which the Leader of the Opposition just said, in terms of lessons to be learnt, perhaps he said lessons ought to be learnt in terms of changes in the law, I think that is the words he used, it is also changes in administrative practices because on the one hand I will probably be one of the recipients of these criticisms in terms of Buildings and Works. Whilst Buildings and Works and Community Projects have progressed and moved on and modernised that does not mean that we still do not have to progress and provide better services in years to come. The positive contribution and the criticism that Henry will bring has to be seen in a positive light in terms of keeping the process of reform and modernisations particularly in Departments like Buildings and Works. I very much look forward to his criticisms.

HON CHIEF MINISTER:

Mr Speaker, very briefly, just to express satisfaction that there appears to be unanimity amongst us. The Leader of the Opposition said it would be a pity if the appointment had been made only by one side of the House. I assume the Leader of the Opposition was just being imprecise in his language. Of course, he knows that the appointment has been made. What this House is doing is confirming it. It is preferable that Ombudsmen should, if at all possible, enjoy unanimous support but I do not think we should make it slave to that because otherwise what in effect one is doing is handing over the power of appointment from the Government side to the Opposition side, if we allow it to be established that Ombudsmen must be unanimously supported by both sides of the House we might as well rewrite the Ordinance and say "the Leader of the Opposition shall appoint the Ombudsman". Much as for practical purposes the office of Speaker is an appointment of the House, or rather confirmed by the House, it is an appointment of His Excellency the Governor, but at the end of the day, and there is some historical precedence for this as the Leader of the Opposition will remember, at the end of the day the Government have its majority and would be able to carry through its preference in the absence of agreement. But I share the underlying sentiment of what the Leader of the Opposition was saying that it would certainly be much preferable if without working ourselves into a stalemate situation it would certainly be preferable that the confirmation by the House be on a consensual basis and I am very happy indeed and I am indeed grateful to him that it has been relatively

easy for us to arrive at that consensus on this first occasion which, as I say, gets off to a very good start.

The Leader of the Opposition referred to the Ombudsman as structured. I would not want anybody to understand by that remark that there is something unusual about the structuring of the Ombudsman here. The structure of the office of Ombudsman here follows quite closely the structure... there are some differences but it follows quite closely the structure of the Ombudsman elsewhere, especially the structure of the Ombudsman elsewhere in other small communities which is why we paid particular care and looked, particularly closely, at the Maltese experience, for the Ombudsman. The Leader of the Opposition also expressed, not doubt or reservation but he wondered out loud in what circumstances it might be necessary for the Ombudsman to question Ministers, given that he was not free to interfere with policy. As the hon Member will well remember, and even though it happens to a much lesser extent now, it is true that Ministers have a degree of involvement in the implementation of policy. This was certainly much, much more so the case when they were in Government but I think it is true to say that even in democratic governments across western Europe there is an increasing tendency, without completely distorting the difference between policy-making and policy implementation – one being the job of Ministers and the other being the job of the public administration, the civil service, there is an area of overlap. I think it is inevitable that there will be an area of overlap. I do not think the line is drawn so clearly and sharply that it is possible to say that Ministers never have an involvement in administration, in the implementation of policy and therefore in that context there may very well be a need for the Ombudsman to have recourse to those powers.

Mr Speaker, in conclusion and I notice that the new Member in the House has not stood up to contribute to this debate. I would like to think that that is because he no longer considers that he will be voting in favour of the toothless tiger.

Question put. The motion was carried unanimously.

HON P C MONTEGRIFFO:

Mr Speaker, I wish to seek leave of the Assembly to withdraw the motion standing in my name.

Question put. Agreed to.

BILLS

FIRST AND SECOND READINGS

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE TOBACCO ORDINANCE 1997 (AMENDMENT) ORDINANCE 1999

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.

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 introduces a number of amendments to the Tobacco Ordinance 1997, that hon Members will recall. The amendments are driven by a series of requests put to the Government by those responsible for its implementation. That is true in the main, it has some items of driving by Government policy, but in the main it reflects shortcomings and improvements which the Law Enforcement Agencies have pointed out following the first year of implementation of the principal Ordinance. There is a considerable body of evidence that whilst there is no sea-borne tobacco smuggling, that there are still significant pockets of hoarding, storage of tobacco by unlicensed people in unlicensed places which, I suppose, might get out by way of smuggling overland, might even get into the domestic market other than through licensed wholesalers and licensed retailers and, thirdly, there remains the risk that if these hoards of tobacco are allowed to remain in place, that at some unknown time in the future, there might be a resurgence of sea-borne tobacco, given that there are stocks available for that

purpose. The Government, as the House well knows, and as indeed is widely known in the community at large, will not tolerate a resurgence of sea-born tobacco smuggling in particular and therefore wishes to close or do all that it possibly can to arm the Law Enforcement Agencies with the powers that they need to prevent that happening and to protect Gibraltar from the terribly adverse consequences that we have seen in the past, of a resurgence of that activity.

Mr Speaker, one amendment that the Bill introduces is that it applies the same rules to renewal and revocation of licences as presently apply to the issue of a licence. In doing so, the previous convictions bar, hon Members will remember that in the principal Ordinance there is a rule that says that one is not entitled to be issued a licence if one has ever been convicted of an offence under a list of Ordinances that were listed in the Bill. The amendment, in introducing the same regime that presently applies for the issue of licences, applying it now to the renewal and revocation of licences, nevertheless softens the regime in respect of all three, by saying that it will be a bar if one has been convicted during the last two years and not ever. It also relaxes the law governing the exportation of tobacco by limiting the application of section 11 to cigarettes. The Bill also corrects a discrepancy between the quantity of cigarettes that a person may carry in a car without needing a permit and the quantity that a person may carry as a pedestrian and those amendments are introduced by section 13(7). At the moment we have the unintended anomaly that as a pedestrian one can legally carry 1,000 cigarettes, namely a commercial quantity, but what one can carry in a car was limited to 1,000 cigarettes per occupant. So that, in other words, three occupants of a car could only carry 3,000 cigarettes between them but if they were walking, as opposed to driving, they could take just short of 6,000 cigarettes. What has been introduced by this amendment is that each occupant of a car will be able to have, in the car with him, the same quantity of cigarettes as he is able to be in possession of if he is a pedestrian. The Bill also widens the definition of motor vehicle by including motor cycles which was excluded from the original definition so that, for example, until this amendment is passed, one cannot commit the offence of transporting without a licence on a motor cycle.

Mr Speaker, the Bill also inserts new sections 17(a) to 17(d) into the Tobacco Ordinance, thereby giving Customs Officers powers of arrest, search and entry, with respect to offences contrary to this Ordinance as they currently have under Part II of the Imports and Exports Ordinance 1986. The powers referred to in the new sections 17(a) to 17(d) are as follows: It gives the Police and Customs Officers powers to arrest

persons if in their opinion there are reasonable grounds of suspecting that offences have been committed against the tobacco Ordinance 1997, or if there has been an attempt to do so. It gives to Police and Customs Officers powers to require information from persons who they reasonably suspect of importing, exporting, transporting, or possessing cigarettes in circumstances contrary to the 1997 Ordinance. It gives to Police and Customs Officers powers to enter and search premises, vessels or aircraft, when they reasonably suspect cigarettes may be found in circumstances which would amount to a breach of the Ordinance and to search persons who a Police or Customs Officer reasonably suspects is in possession of cigarettes or importing or exporting cigarettes or intending to export cigarettes in circumstances contrary to the Ordinance.

Mr Speaker, each of those powers has a parallel. The language is substantially drawn from the 1986 Imports and Exports Ordinance. As I have explained section 6 of the Tobacco Ordinance 1997, deals with the issue of Wholesale and Retail Licences and clause 2(3) of the Bill, now before the House, proposes amendments to section 6 so as to present the renewal of licences to persons or in specified circumstances to Body Corporates, whose directors have been convicted during the two years prior to an application for such a licence, of an offence contrary to the Ordinance or one of the other Ordinances listed there and basically what it says is "you are not entitled to renewal of a licence if events have happened which would disentitle you from having been issued this in the first place". It does the same in respect of the Collector's power to revoke a licence. The Collector gets the power to revoke a licence in circumstances where events have happened after the licence has been given which would have disentitled a licence in the first place if this had occurred before the licence was given.

Clause 2(5) of the Bill provides for reviews of licencing decisions by way of applications for Judicial Review of the Collector of Customs decisions instead of by way of a full-rehearing of the matter in the Supreme Court. Of course, that application for Judicial Review is made in accordance with the ordinary rules of court that exist for the reviewing of administrative decisions by the Judiciary.

Clause 2(12) of the Bill introduces amendments to the regime that is already contained in section 18 of the Ordinance, and that section 18 which already exists, hon Members will recall, fundamentally says that one cannot sue a Police or Customs Officer when he uses the powers that he has in the Ordinance against a person if, but provided that, the

Supreme Court issues a certificate to the effect that the Officer exercised his power reasonably and with reasonable cause. All that is already the law, all that is already in section 18 of the Tobacco Ordinance. What this amendment does is to put the wording of that section without changing the regime of it but makes it compatible with the fact that new powers have been added under section 17(a) to section 17(d) of the new Bill. So that whereas in the previous Ordinance it listed what one could not sue the Police and Customs Officer for, now it simply says, if one refers to it generically by reference to the exercise of the powers given in this Ordinance, as opposed to listing them all one at a time in a list.

Mr Speaker, I shall, at Committee Stage, be moving a series of amendments of which I will give notice. These correct a number of drafting errors which I will explain to the hon Members at Committee Stage. They do not, with one exception, affect the general principles of the Bill. The one amendment that I will be introducing which does relate to a principle of the Bill is not, as I have read in some sectors of the press, an amendment which I consider raises an issue of Constitutionality. Remember that the philosophy of these powers and indeed the wording of these powers are lifted from the Imports and Exports Duty Ordinance 1986, but, as presently drafted, the Bill does provide for a power of entry and search without warrant into premises. That power exists in the 1986 Ordinance in respect of aircraft, boats and vehicles so that the regime that is introduced in section 17(c) Power to Enter and Search Premises, that is... if hon Members look at sections 6 and 7 of the 1986 Imports and Exports Ordinance they will find that the wording is practically indistinguishable. However, what they will notice when they compare the wording is that sections 6 and 7 do not apply to premises in the original Ordinance, it only applies to boats, aircraft and vehicles. I do not consider that it is necessary, not that it would be unconstitutional, but I do not think that the extent of the problem that we have at present in Gibraltar in this matter is such that it warrants giving Police and Customs Officers the powers to enter into people's premises without a warrant and therefore although I am advised that it would be perfectly constitutional, indeed there are provisions in England in several statutes which allow the power of entry without warrant. Regardless of constitutional items, I am not persuaded that the problems that the Government seek to address by this Bill warrants or requires Police or Customs Officers to be able to enter and search premises without persuading a Justice of the Peace on the usual warrant rules and I shall be introducing amendments to that effect. I will not be introducing amendments in relation to the other powers, namely, the power of

arrest, the power to require information and the power to search persons which, not only are entirely constitutional, as indeed is the one that I will be amending, but indeed is lifted straight and in parallel circumstances and in comparable circumstances if lifted straight from existing sections which have been part of the Law of Gibraltar in the context of the Imports and Exports Duties Ordinance since 1986.

Mr Speaker, one has heard reference in certain sectors of the local press to unarticulated views that certain provisions may be unconstitutional. Let me say that this Bill has been in the public domain since the 18th February 1999, that is nearly now two months ago. Although I have received four letters, I think the first one was towards the end of March, from a group of individuals, but on the letter headed paper of the local law firm of Phillips and Co. purporting to be speaking on behalf of the Bar Council which was subsequently clarified not to be so, but nevertheless intending or expressing the desire to make written representations to the Government for its consideration of its views on the Bill, representations that the Government would have welcomed just as the Government welcome representations from any source that results in improved legislation, I have to say that I have received no representation relating specifically to a measure. No one has written to me saying "I think sub-clause this is bad law, or unconstitutional or illegal, or I do not think it is a good idea, or I think it could be done better this or that way for any reason". Therefore I regret that those that have made a media issue of this Bill have not since the 18th February 1999, found the time to put pen to paper and express their substantive views to the Government, with which the Government may have disagreed on the basis of what I have heard on the grapevine, I think the Government would have disagreed with the vast majority of them but in any case I regret that the Government have been deprived of the possibility of being persuaded by representations because they have simply not been put to us.

I commend the Bill to the House.

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

HON J J BOSSANO:

I suppose, Mr Speaker, it might have occurred to the Chief Minister that the people who were considering making representations might have heard on the same grapevine but in the opposite direction the prospects

of success that the representations had and that might have discouraged them from making them. Let me say that when the March 1998 amendment to the 1997 Ordinance was brought to this House we pointed out to the Government that where they were replacing tobacco by the word "cigarettes" in some parts of the Ordinance there appeared to be contradictions in that in other parts they were still leaving them there and the most we could get the Chief Minister to admit was that in his view it was inelegant to leave it there. It has been inelegant for a year but it has now been removed because it is now no longer inelegant – for an entirely different reason, I think. Clearly, when we put that view across we put the view because we thought it was preferable to have legislation passed by the House that did not appear to be inconsistent in different bits of it. The argument that has been put in that the wording of some of the sections that are being introduced is being lifted from other legislation, the Imports and Exports Ordinance and introduced here is, in fact, not a justification. The fact that in one particular law, in respect of one particular offence, one decides to conduct business in a certain way, does not mean that one can then lift that section, stick it in another law and say "well, because it is copied from the other one, if it was alright in the other one it is alright in this one". It does not follow. He ought to know that. It is quite obvious why in 1986 the Customs Officers had powers to enter into aeroplanes and ships and vehicles because what the law was concerned was with smuggling into Gibraltar and consequently it was to ensure that they were able to take action to prevent. The Ordinance says that they may enter on the grounds that they suspect that any ship, aircraft or vehicle is or may be carrying any goods which are chargeable with any duty which has not been paid or secured. That power is for the obvious reason that if the Customs Officer believes that somebody is in a vehicle or a boat in which he has got goods which he should have declared and he has not declared it and he has not paid the duty on it, the officer has got the right obviously to say "open your boot", that is what this law does. That is not the same thing as stopping somebody that has bought 2,000 cigarettes and saying "open your boot" and then the only way the person can escape arrest is by quickly opening one carton, then opening one packet, then smoking one cigarette and he is left with 1,999 in which case he is no longer breaking the law. We are not talking about the same scenario. If the Government are concerned about hoarding then it seems strange that the one place where the hoarding could be taking place, which is in premises, is the one place which is going to be amended to remove it because it is not suggested that people are hoarding these things in vehicles or hoarding them in aeroplanes or hoarding them in ships which are the other three categories. The Chief Minister said that the main

problem is that there is hoarding. That is what he said in moving the general principles of the Bill. He said the Bill has been promoted because of representations by the Law Enforcement Officers who, presumably, believe that they need extra power and he identified that the problem was that there was hoarding in unknown places and that if that was allowed to continue then that quantity that is hoarded could somehow enter into the market. If it is hoarding then it is difficult to understand that if that is the main basis for the need for the legislation, to be able to tackle the problem of hoarding, then the hoarding is taking place in premises. The new powers which were previously in the Imports and Exports Ordinance in relation to dutiable goods did not, of course, deal with premises because they were not concerned with hoarding, what they were concerned with was importation. Consequently, if one has to search somebody's premises it is only because they have escaped the Customs at the entry points which is by sea, by air or by land. If one stops them by sea, by air or by land one does not need to worry about the ultimate destination and consequently this is why the primary focus is on the means of transportation of these goods. The powers are there to prevent the movement of goods that are chargeable to duty on which duty has not been paid but, of course, there is a provision in it which says that the Customs Officers under the existing Imports and Exports Ordinance also have the power in respect of goods the importation or exportation of which is prohibited or restricted by the Imports and Exports Ordinance, or any other Ordinance. If that is already there and the only difference between that and the new provision is the premises and the premises are going to be taken away, then why is it that the Government need to lift what is already in the Imports and Exports Ordinance and put it in this Ordinance? Unless, in fact, the whole purpose of the Ordinance is to give the power to Police Officers which is not in the original Ordinance. That is the only difference that I can see. When we are talking about the general principles of the Bill, I am trying to establish what is the purpose of the exercise. From what we have been told the only thing that has been identified is the hoarding and let me say that we both know that the volume of tobacco that goes in and goes out every month is very, very substantial and has been since the removal of the quota. It does not seem to me that it is a question of hoarding because if the stuff was being hoarded and was not leaving then it would not be replaced so if it is being hoarded it is being hoarded, as it were, in a place to accumulate it but it must be going out somehow. It is not just being held in stock. The argument that has been used for increasing the amount that a person may carry in a vehicle to 1,999 we have been told is to remove an anomaly in that as a pedestrian they could carry 1,999. Clearly, it is difficult to understand

what it is that the Law Enforcement Officers are going to have to do to stop and search somebody whom they suspect of intending to commit an offence under this Ordinance if they have to carry more than 2,000 cigarettes on their person in order to bring about that suspicion. I would have thought it would be difficult to carry 10 cartons on one's body without it being noticeable. Presumably, they are not just going to walk across the frontier with five cartons in each hand, given that only one carton is permitted and the other nine would be taken away from them. If somebody has got two bags with five cartons in each bag and there is one cigarette missing from one of the cartons, that is perfectly legal and they can be taking those nine cartons, that is that 1,999 cigarettes home because that is not a commercial quantity, 2,000 is a commercial quantity. Although they are not allowed to buy in one go the law says they can only buy 1,000 so they buy 1,000 and then they go outside and they leave the 1,000 with their friends and they go in and they buy 999 and then they can carry the 1,999 with them. The power to stop and search them is to search them for what? If they have not got the 1,999 on their body, they are carrying them, then surely it is visible, they do not need to be searched, one can see them a mile away. The powers that are being introduced in the Ordinance may be similar to the powers that exist in the Imports and Exports Ordinance but in the Imports and Exports Ordinance the powers are related to what is obvious which is the fact that people are acting contrary to the Ordinance in breach of their obligation to pay duty which is not the case here. Here we are talking about the movement of duty paid tobacco in quantities under 2,000 and it is legal under 2,000 and illegal if it reaches the 2,000 mark. Let me say that if the anomaly between the pedestrian and the car occupant was something that needed to be corrected and if the Government are concerned about the quantity of tobacco that is being smuggled into Spain, then it could have been normalised by bringing the figure down to 1,000 instead of bringing it up to 1,999. It certainly seems a peculiar thing to have a situation where the difference between breaking the law and not breaking the law is whether there is one cigarette missing from somebody that is carrying 10 cartons of cigarettes on his body or in his handbag or in plastic bags.

The question of the constitutionality frankly is not one that we have addressed on the basis of having come ourselves to a conclusion that this is unconstitutional. We would have expected, certainly, that the Attorney-General, irrespective of whether any representations had been made or not, would advise on that as I think is part of his job, to advise the Government on whether a legislation that is being brought to the House can be deemed to be unconstitutional or in breach of any

international obligations. But, it is not unknown for that to happen. It happened before. It has been challenged before and, having had legislation voted by the House, it has had to be revoked. I can recall one particular case when that happened, many years ago. It would be open presumably to anybody to challenge the constitutionality of this after it is passed by the House and we would have to correct it if in fact the Courts rules that the drafting of it was in conflict with the provisions of the Constitution, or international obligations. It seems to me that once we take away the question of the premises, it seems to me that it is a provision that gives a power to the Police Officer and, frankly, I am not sufficiently knowledgeable about the powers of the Police to know whether there is a specific need to give them this power here or whether they already have that power. If somebody is breaking the law I would have thought that the Police have got the right to arrest a lawbreaker. In any case, in the existing Imports and Exports Ordinance if a Customs Officer arrests somebody for an alleged offence under that Ordinance he is required to hand him over to the Police anyway. It is difficult to see where, in relation to the explanation that has been given about the representations that have been made on the need to amend the Ordinance to make the original more effective, where this is being achieved by what is being proposed. It raises issues which we are not happy have been cleared up satisfactorily so we do not feel we can support this. We abstained on the original one because we thought the removal of the quota would lead to problems of keeping the volume down. I think that, clearly, where there is a profit to be made, like in every sphere of life, as long as there are people who can make some money out of some activity, whatever is done to prevent it, somebody will think of a way of getting round the problem. If the stuff is not there in the first place there is nothing they can do about it. We hope, Mr Speaker, that some of the questions I have raised will be answered.

HON CHIEF MINISTER:

Mr Speaker, I do not know what grapevine the gentlemen in question are, and really, one only comes across two names in this respect. I do not know what grapevine they might have heard. I do not normally communicate my views to the grapevine, I normally announce them so it might be that they heard it on television. But certainly that they should have been discouraged from making substantive representations to the Government on the basis that they may have heard through the grapevine that their representations were not going to succeed before the Government even knew what their representations were going to be, whatever else it does suggests to me, at least, that they cannot be so

concerned if their commitment to making the representations is so easily defeated as a third hand grapevine. The fact of the matter, Mr Speaker, is that if there is a citizen who is genuinely concerned about the quality of a piece of legislation that the Government are going to introduce, the Government would welcome hearing from that citizen. All we have had is much noise in the press, many offers that we intend to do and in two months we have heard nothing. Frankly, as far as the Government are concerned that calls into question the seriousness of the whole approach to what are important matters. The only inkling that the Government have had of what the substantive complaints are from these gentlemen is an article that was carried in a Spanish newspaper yesterday. The EUROPA SUR is hardly, it seems to me, an appropriate, conventional, or indeed, particularly constructive forum to use for communicating to the Government of Gibraltar one's views about the quality of legislation that they plan to introduce. I think that also calls into question the animus with which some of these statements are being made.

Mr Speaker, the point that I was making in terms of the fact that these powers existed is that if a power is valid in one Ordinance, it cannot be unconstitutional or it cannot be a breach of human rights per se. It may be more or less desirable in a different Ordinance. It may be good law or bad law. It may be better or worse law but the fact that powers exist in an Ordinance to give somebody the right to enter a boat or to enter a caravan and do things means that it cannot possibly be unconstitutional to do it in other circumstances. It might be less desirable from a legislative point of view but it certainly cannot be open to the challenge of constitutionality nor indeed to be ridiculous accusations that one hears about being in breach of civil rights. I think that frankly I do not know the gentleman who made these remarks personally. I have never met him. I do not know who he is, where he comes from or what his angle might be. What I can say is that it really does Gibraltar no favours to rush to the Spanish or indeed to any other press with suggestions that there are breaches of civil rights going on in Gibraltar on the basis of an unexplained view of a piece of Government legislation which they have not even troubled to explain to the Government itself.

HON J J BOSSANO:

Mr Speaker, the point on the constitutionality and why the fact that if it is in one law does not necessarily follow that it is constitutional in another one is because in the Constitution it says "except with his own consent no person shall be subjected to the search of his person or his property

or the entry by others of his premises..." and then it goes on to say "nothing contained in or done under the authority of any law shall be inconsistent to the extent that the law in question makes provision" and it lists things. So in fact if one were to take a particular law which is not making provision for any of the things that are listed in the Constitution, the fact that the provision exists in one or the other, if the law says "if you are going into somebody's property because you are enforcing a law that deals with defence or with public safety or with public order or with public health" and one takes this Ordinance and says, "right, this has nothing to do with defence, it has nothing to do with public safety, it has nothing to do with public health" and one went down the list, one could then say "well, alright, although there are 20 other laws which are constitutional this particular one does not fit the criteria that the Constitution says because it has to be done under the authority of a law to the extent that the law in question makes provision for a list of things". Presumably, I would have expected that that would have been looked at by the Attorney-General to make sure that it does. The point I am making is that in his answer the Chief Minister seems to be saying that if it was already in some other law then it must follow that it is not unconstitutional and that it can be put in all laws. I do not think it follows from my reading of this.

HON CHIEF MINISTER:

Mr Speaker, the hon Member's reading of that particular provision of the Constitution is incomplete. He left out, for example, he conveniently skipped over public morality, and the list is such and all of those terms have been more than judicially interpreted and they have a meaning and public order would include most or indeed all criminal laws. Public order does not mean the prevention of riots. Public order means also laws which are in place to prevent, to keep, for good government, to prevent breaches of the peace and indeed to regulate society in an appropriate fashion. But going back to that, I think the main point that the hon Member was making in that intervention, there is no constitutional right not to have one's person or one's property arrested or searched. The constitutional right is not to have that done to one unless it is specifically authorised in a statute, in a law, but it has got to be a law that can be made to fit into one of those lists of five or six categories. Obviously we believe that this is such a law as indeed would be all the laws just as the Criminal Procedure Ordinance which I think in section 26 or 27 is the one that gives the general power of arrest and the general power of search and things of that sort, is a criminal law which could create a general power, not in relation to any specific offence and that is not

unconstitutional. It is not unconstitutional precisely because it is provided for in a law. What the Constitution says is that if there is not a law, one's property and one's person cannot be interfered with and the point that I have been trying to make and obviously I suspect that we might have been misunderstanding each other, is if it is unconstitutional to have one's property searched, one's car, one's property searched, arrested, seized; if one is in a boat or if one is sitting in a car, that is still one's person and it is still one's property. It cannot become unconstitutional simply because it is done in respect of premises. The constitutionality or unconstitutionality of it cannot depend on whether one is a citizen standing at the border or whether one is a citizen sitting in a boat in a marina or whether one is a citizen sitting in a bar in Main Street. The nature of the action, the nature of the measure, cannot depend for its constitutionality where it physically takes place in Gibraltar because the Constitution applies to everybody in the whole territory of Gibraltar regardless of whether one is trying to gain import or export or whether one is walking down Main Street or sitting in one's home. That is the point that I was trying to make to the hon Gentleman earlier. But, of course, I agree with the hon Gentleman, the Government have a view that this legislation is not only constitutional but indeed is desirable and necessary in the context of the tobacco smuggling situation but that is why we have a system where we have a Judiciary to which citizens who feel that the Government have got the judgement wrong can apply to the Supreme Court and can challenge the legality, in constitutional terms, of the laws that this Parliament passes. The Government's view can be wrong. Parliament's view can be wrong. The Attorney-General's view can be wrong. The Bar Council's view can be wrong. That is why we have Courts of law in which people can challenge the constitutionality of the law. Then the Government have to defend its position in such a court. What the Government do not do, Mr Speaker, is, given that there is first of all the possibility for proper consultation where the Government could have been approached any time since the 19th February to be given a considered view of what the alleged objection to this Bill was, which we have not been given, on the basis of one interview on GBC television, one article in the Gibraltar Chronicle and one article in the Europa Sur, the Government deciding that it is going to withdraw legislation because some unidentified person suggests that he thinks it is unconstitutional. The only person whose judgement as to constitutionality ultimately counts, the only one individual whose view counts, is the Chief Justice or whoever else is presiding in a Court of Law. Other than that what we have is a process of consultation in which people's views, if put to the Government, which we have not had the benefit of in this case, the Government take into consideration and give

due weight to and then either set in whole or in part or reject in whole. That process has not occurred in this case and therefore it is just not reasonable for people to expect the Government to depart from legislative proposals upon which it has taken advice, upon which it has consulted, upon which there has been consideration. It is just not reasonable to expect governments to abandon or delay or withhold legislation which the Government are advised is an important tool for the Law Enforcement Agencies, simply because somebody flies a kite which they do not even ever really mean in a meaningful and businesslike manner.

Mr Speaker, the Government are not just concerned with hoarding. The Tobacco Ordinance is not just about hoarding. Hoarding, as with everything else, transportation, import, export, possession, wholesale, retail, they are all parts of the regime designed to protect Gibraltar from being used as a base for sea-borne smuggling, this fast launch activity that used to be prevalent in the past. The hon Member said if we are worried about hoarding and if that is the main basis of the Bill, then the hoarding has to be taking place in premises, because that is where one hoards, one does not hoard on one's person, one hoards in premises and therefore why have we taken premises out? Mr Speaker, it is not that we have taken premises out. There is no relaxation. These are the provisions against possession of tobacco in commercial quantity without a licence. Of course, those remain fully in place. All that is changing is that specific powers in relation to the Tobacco Ordinance to search and enter premises are being given on the basis of a Justices of the Peace warrant. That is the amendment which it is presently my intention to move when we come to debate the Committee Stage. I do not know whether the hon Member was just focusing on the matter more generally, but there is no question of taking away, or taking out, the question of premises. The offences are still very much there. All we are talking about here is that in respect of premises, one is sitting in one's house, which is what we mean by premises, in one's house or in one's office and the policeman suspects that one has got more than the amount of tobacco that one is allowed to have without a licence, whatever it is 2,000, do we believe that he should be able to break the door down and sort of storm into one's living room and say "Mr Bossano I think you have got more than 2,000 cigarettes, let me search your house". Or do we believe, on the other hand, that what he should do is go to a Justice of the Peace... I am sorry, I hope the hon Member is not offended if I used his name, or do we believe that it is preferable that what a Police or Customs Officer should do in those circumstances is go to a Justice of the Peace and say "now, look here, Mr Justice of the

Peace, I suspect that Mr Caruana has more than 2,000 cigarettes stashed underneath his favourite armchair in the living room. My suspicion is based on the fact that I saw his wife arriving at his house with a transparent plastic bag carrying what was clearly more than 20 cartons...". That is the issue that is at stake in the proposed amendment that I propose to introduce. Even accepting that the Police and the Customs Officers have the power to burst into a car, to burst into a ship, to burst into an aircraft, at a point of entry into Gibraltar, the fact that he has the power to do that in those circumstances and in those places, is it right to give the same powers in respect of people sitting in their own homes? That is the issue and we believe that in that internal domestic context the amendment will introduce the need to obtain a warrant. There is certainly no dilution.

Mr Speaker, it may well be that some of these powers could have been used in the context of tobacco, even though they sit in other Ordinances. The fact of the matter is that the Imports and Exports Ordinance no longer deals with tobacco. All the cigarettes provisions are now contained in something which is still called the Tobacco Ordinance and that is certainly a remaining anomaly but I know of no procedure to change the name of the Bill once it has become an Ordinance, as opposed to changing things in it. The issue there is that the powers are therefore left in an Ordinance, the Imports and Exports Duties Ordinance which no longer deals with cigarettes. The powers are not stated in the context of the specific offences created by this Ordinance and that is why we were advised... the hon Member will tell at a glance that this is not the sort of issue that politicians sit up deciding it would be desirable to do. If Government have been persuaded to bring this legislation on the basis that it was truly improving, the availability of powers and improving the workability and enforceability of this Ordinance. Mr Speaker, if the worst objection that the hon Members can have to the Bill is that it unnecessarily repeats powers which were already available in another legislation then that, one might say, is clumsy drafting but it would not seem to me that that was sufficient reason to vote against or to withhold support from a piece of legislation which ought to be done on the basis that one does not agree with the content of it and not the fact that one believes that the matter is already dealt with elsewhere.

Mr Speaker, the hon Member said that volumes in and out have increased very substantially since the removal of the quota system. The fact is that volumes are not up since the removal of the quota system. The fact is that the volumes of tobacco imports into Gibraltar are not at the levels that they used to be, for example, in 1994, 1995. The removal

of the quota system has not resulted in more tobacco coming into Gibraltar. What it has resulted in, if one believes that the quota system was strictly enforced before, in theory it is now possible to get more... there were five Licences, five quotas of what was it 20 or 30 boxes each? Before I think the total daily quota was 150 boxes. Of course, in theory now there is no limit to the number of boxes but the hon Member knows, as well as I do, that the quota system did not prevent hoarding before. The hon Member must know that when tobacco smuggling in fast launches was prevalent, these boxes did not come from the warehouse of a Licensing Wholesaler straight to the shore for some balaclava youth to throw over the edge of the water. That these boxes were lifted from hoards that were then built up from the quotas that were allowed to reach the local market. That has always happened and what we are now doing is ensuring that that hoarding, which has always taken place, is now made increasingly more difficult and indeed that is the object of the main powers in the original 1997 Tobacco Ordinance.

I cannot say that I agree with what the hon Member said about why does one need the powers of search, if one is carrying 20 cartons in a carrier bag it must be visible and one certainly cannot carry 20 cartons around ones person. Of course, these laws are not related to whether one is carrying them about ones body. These are offences of possession and it does not matter whether one is in possession because one has got them tucked around ones person or because one is carrying them in a bag or because one has them in ones car or because one has them in ones home, or because one has them under ones control anywhere. All of that constitute possession but as a matter of plain common sense I do not accept that it is always obvious when somebody is carrying 20 cartons of cigarettes in bags. Certainly if one goes to a well known shop in Irish Town, whose plastic bags are quite transparent and with green letters on them, it is clear one can see the cartons through them. But those that devote their time to hoarding cigarettes for the purposes, potentially of smuggling operations, do not take them home in transparent white plastic bags. They use black bags. They use refuse liners, they use suitcases, they use all sorts of untransparent receptacles. All sorts of untransparent receptacles which would certainly be most relevant in the context of Police powers of arrest and search.

Mr Speaker, just in passing, the hon Member says that the Government are obviously concerned about the quantity of tobacco being smuggled into Spain, then why do they not reduce the commercial quantity from 2,000 to 1,000 instead of equalising it at 2,000, in other words, instead of rounding it up? Mr Speaker, the reality of it is that nothing in the

Tobacco Ordinance is designed to address specifically the question of the volume of smuggling into Spain. The Tobacco ordinance 1997, has very strong powers and the regime that it creates are intended primarily to protect Gibraltar from the fast launch smuggling activity that used to take place. The Tobacco Ordinance is driven not by concern about the Spanish Exchequer, but about concern about the internal damage to Gibraltar's social fabric, about the damage to Gibraltar's reputation, about the whole destructive dynamics of the culture and the activity that was connected with the whole trade of fast launch or slow launch, for that matter, based tobacco smuggling. I do not think I can allow the hon Member to get away with the glib and passing remark which might convey to any listener the idea that the Tobacco Ordinance is about the quantity of tobacco that is smuggled into Spain. No quantity of smuggling in fast boats is acceptable. The regime in Gibraltar is calculated to prevent smuggling operations. The Government of Gibraltar would be equally concerned, even though it is not scandalous and even though it does not have all the ancillary adverse side effects that the fast launch activity had, the Government of Gibraltar would also be concerned if Gibraltar were to become used, for example, as a base for containerised tobacco smuggling across the border in lorries. But, neither the concern of the Government, nor the objectives of the Ordinance are designed to decide whether one can take 1,000 or 3,000 cigarettes. Those are matters of ordinary Customs regimes which apply all over the world and I suppose that the Customs in Spain allow people to cross that border with whatever number of cartons they want to let them cross over with and that is a matter entirely for Spain.

Mr Speaker, unless I have misunderstood or failed to understand any of the matters that the hon Member has put to the House in his address, I have not detected in what the hon Member has said any opposition to the amendments in terms of their substantive content. He asked me to answer some of his questions. I have attempted to do so but I have done so with the feeling that it was not clear to me that what his objects actually are, if indeed there are any, or what his opposition is, if any, to the actual content of the Bill beyond the fact that he suspects... I do not think he is correct, but he suspects that it may be unnecessary to have some of these things in here because they might already be available in another Ordinance. I do not think that is the case but even if it were the case I do not think that that amounts to opposition to the Bill, but I am very happy to give way to the hon Member now or leave it until the Committee Stage or later if he just wants to correct that.

HON J J BOSSANO:

There is one point that he has not answered, Mr Speaker. I said that in the powers what he has lifted from the Imports and Exports Ordinance refers to Customs Officers and what he has introduced here says "Police or Customs Officers". He has not explained the difference.

HON CHIEF MINISTER:

Only, Mr Speaker, that whereas the Imports and Export Duties Ordinance is a Customs piece of legislation and speaks of Customs Officers, the Tobacco Ordinance is not exclusively a piece of Customs legislation. The Tobacco Ordinance has nothing to do with revenue raising. It does not create offences of that sort. It creates general offences of being in possession in Gibraltar, regardless of importation and exportation, it creates general offences of transportation within Gibraltar and therefore it is a more general criminal law as opposed to the Imports and Export Duties Ordinance which is a more specific Customs law and therefore it is not the policy of the Government to limit or to indicate, in the language of it, that the enforcement of the Tobacco Ordinance is particularly a Customs matter. The Government consider that it is like responsibility for all Gibraltar's laws, policing of it and enforcement of it, is a matter for the Police but, traditionally, this is an area in which the Customs have provided support to the Police. The Government very much welcomes that support. I know that the Police appreciates and much values the support that they get from the Customs and vice versa, the Customs values the support they get from the Police in their joint policing of this piece of legislation and that is why Police and Customs Officers appears. There is no sinister reason for that. It is just to make it perfectly clear that this is a claw that is policed by both the Police and Customs Officers in an internal domestic context.

Question put. The House voted.

For the Ayes:

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

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

Absent from the Chamber: The Hon J J Holliday

The Bill was read a second time.

HON CHIEF MINISTER;

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

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that this House do now adjourn to Monday 26th April 1999 at 10.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 4.40 pm on Friday 9th April 1999.

The House resumed at 10.30 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 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 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 J C Perez
The Hon Dr J J Garcia

ABSENT: The Hon P C Montegriffo – Minister for Trade
and Industry

IN ATTENDANCE:

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

DOCUMENTS LAID

DOCUMENTS LAID

The Hon the Attorney-General moved under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the laying of documents on the Table.

Question put. Agreed to.

The Hon the Attorney-General laid on the Table the following documents:

- (1) The Revision of the Laws (Supplement No. 3) Order 1999.
- (2) The Revision of the Laws (Supplement No. 4) Order 1999.

Ordered to lie.

The Hon the Financial and Development Secretary laid on the Table the Draft Estimates of Revenue and Expenditure 1999/2000.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE INSIDER DEALING (AMENDMENT) ORDINANCE 1999

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Insider Dealing Ordinance 1998, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill introduces technical amendments to a piece of

legislation that hon Members may recall was introduced recently and the amendments are simply to provide that the power to refuse to disclose information applies only in respect of legal professional privilege. In other words, under the Insider Dealing Ordinance one is not required to produce information which would be subject to legal privilege in Supreme Court proceedings and that in terms of banking confidentiality, banking confidentiality can only be overridden in respect of insider dealing prosecutions in cases authorised by the Minister for Trade and Industry, in order to make it clear that there is not a general overriding of banking secrecy in this matter. The law, as it presently stands, makes banking secrecy override prosecutions for insider dealings. The effect of this amendment is that in respect of insider dealing prosecutions only, banking confidence is overridden where the Minister for Trade and Industry considers it appropriate to do so. Hon Members will remember that the Insider Dealing (Amendment) Ordinance is concerned mainly with the giving of assistance to foreign jurisdictions pursuing in Gibraltar insider dealing information for insider dealing prosecutions in their own jurisdictions. I commend the Bill to the House.

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

HON A J ISOLA:

Mr Speaker, there are two questions at this stage. Part A of Section 2 which in a way limits the legal profession privilege previously given in the original Ordinance I would ask is it on the same basis as is applied in the UK? Is it a drafting amendment that has come after the event to put it into line with the United Kingdom position? The second point in respect of the making of the requirement by the Minister is there any precedence in the UK, or elsewhere, where such a similar provision may apply? I doubt there would be but what does the Government intend the criteria to be which the Minister would apply in determining whether in fact to give his consent to the veil of banking secrecy being lifted? Those are the two questions I have at this stage.

HON J J BOSSANO:

Mr Speaker, I think it is not enough of an explanation to say this is a technical amendment because unless what we are being told is that the original Bill failed to properly transpose the directive and that there is now a technical necessity to do this in order to ensure the directive is correctly transposed, in which case we would want to be pointed to

where in the directive the omission lies because this raises important political issues which are not simply technical. To my knowledge this is the first time where a politician is going to have the power to determine whether somebody should, without his consent, which was, I think, the previous provision, break banking confidentiality. There is nothing here in the law which lays down the criteria that the Minister has to use to arrive at his conclusion. There is nothing to stop that criteria being totally arbitrary. To my knowledge there is no other law in Gibraltar that does that and it may well be, as my Colleague has pointed out, that that is because it is being copied from the UK and that Ministers in the United Kingdom have that power. We know that quite often in the United Kingdom there is a constant reference to Ministers for things that are done by civil servants, but the law says the Minister.

The other thing is that the decision to limit the liability to disclose information alleged privilege to proceedings in which people could be required to do so in court, and that is really what the Bill does, those are the only two things that are being changed, it is difficult to see why it is that the professional responsibility in an area like this in particular of a lawyer should be any greater towards his client than that of an accountant or any other profession when we are talking about insider dealing. We are talking about people who have got information which presumably could be alleged to have been improperly passed on to a customer and the people who are in that position who could argue that they have got a professional relationship with their client in this instance there is nothing here which makes it particularly relevant to lawyers unless relevant to other professions related to activities on the Stock Exchange which is what this is about. Therefore, if we are going to make the protection that was in the Bill in 1998 previously available to professions related to this field of activity now limited only to lawyers we would need to know not just whether they have done it like that in the United Kingdom but whether the wording of the directive makes it relevant in the case of the legal profession and not relevant in the case of other professions that they should have this protection. Therefore, we do not see why in Gibraltar, however academic this exercise may be, we should be giving less protection to different professions than they do in others parts of Europe.

HON CHIEF MINISTER:

Mr Speaker, I will have to confirm it to the hon Gentlemen during the Committee Stage. My understanding is that this would place Gibraltar on the same basis as the UK and that that is the reason why this legislation

is being introduced. The matter has been dealt with by my hon Colleague for Trade and Industry who is unfortunately absent from the House today but I will certainly check that point to see to what extent this is driven by domestic policy consideration. I know that there was an expression of concern from Germany that our Insider Dealing Ordinance did not make it sufficiently clear that banking secrecy was overridden and that aspect of the amendment was by way of clarification. Mr Speaker, the Leader of the Opposition speaks of this being the first time that a politician has power to authorise banking confidentiality to be breached. That is true in a sense. That is protective to the industry. In other words, what Gibraltar wishes to protect against is the general concept of banking confidentiality being overturned in cases which do not warrant it, that banks should not come to Gibraltar on a fishing expedition and the whole concept of banking confidentiality should be disjoined. Therefore, the purpose of this is that the bank will be entitled to continue to assert banking confidentiality unless they are provided by the comfort of ministerial requirements. I do not think it in terms of whether it is the Minister or an official. I think these powers are exercised by Ministers everywhere else. It is supposed to provide comfort to the bank so that they cannot be accused of having improperly lifted their confidentiality in favour of their customer on an appropriate case. The similar question posed by Mr Isola as to what criteria... well, the criteria that the Government will apply in these cases is simply one of: is this a proper enquiry in relation to insider dealing? Does it amount to a case of prima facie evidence? Or, on the other hand, is this just a fishing expedition? I cannot tell the House that there are guidelines already in existence, there is not and speaking on a policy level, the policy of the Government will be to ensure that banks in Gibraltar do not obstruct the investigation in Europe of legitimate, of real cases, of insider dealing but that, on the other hand, this legislation should not become a Trojan Horse through which perhaps non-insider dealing-related enquiries or not very well based insider dealing enquiries, fishing type expeditions, are conducted.

HON J J BOSSANO:

Would the hon Member give way? Why is it that this is needed? I do not think he has explained what it is in the Bill previously passed in 1998 which said that the banks could refuse to provide the information. Why is it that they were less protected? Surely, they were better protected then than they are with this?

HON CHIEF MINISTER:

Yes, Mr Speaker, but the fact is that the directive does not envisage that its effect would be frustrated by people alleging privilege. Therefore, it has been necessary to make it clear that privilege is not a protection to an insider to the operation of the Insider Dealing Ordinance, except in the circumstances set out in this Bill. In respect of the legal profession, the hon Member asked why legal profession and not anybody else? Well, Mr Speaker, the law does not recognise a general professional privilege. The law recognises legal privilege. The law recognises the hon Gentleman's right to consult with his lawyer in a privileged environment. It does not recognise the hon Member's right, or mine for that matter, to consult with an accountant or our stock exchange adviser or our stockbroker or any other form of adviser. Therefore, what the Bill seeks to do is to protect, in other words, not allow the insider dealing legislation to prejudice those cases of recognised privileged relations which are already recognised under a law and that is the relationship between a solicitor and his client. In respect of banking, this point has been raised with us as to the fact that our legislation did not make it clear that banking confidentiality was not an obstacle to Gibraltar cooperating in insider dealing legislation. I know that that has arisen in the context of a particular case. What I cannot tell the hon Member as I speak on my feet, but I will find out for him for the Committee Stage, is whether that is a defect compared to the text of the directive, or whether it is simply an undesired effect of silence on the part of the directive which nobody else has addressed and which we are being asked to address. That aspect of the matter I would ask the hon Member just to bear with me for an hour or two whilst I give him the answer to that particular question that he has posed.

Mr Speaker, I will consider, when I have the answer to the hon Gentleman's question, I will take a view later as to whether we take the Committee Stage later or whether we leave it to the next meeting.

Question put. Agreed to.

The bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today if possible and I really put that subject to what I have already indicated to the hon Gentleman. Perhaps we can revisit

this issue but I will put it on those terms and decide later whether I will proceed or not.

Question put. Agreed to.

THE EMPLOYMENT REGULATION (OFFENCES) ORDINANCE.

HON J J NETTO:

I have the honour to move that a Bill for an Ordinance to make further provision with respect to the powers and duties of inspectors appointed to ensure compliance with the provisions of the Employment and Training Ordinance, the Income Tax Ordinance, the Social Security (Insurance) Ordinance, the Social Security (Employment Injuries Insurance) Ordinance, the Medical (Group Practice Scheme) Ordinance and the Social Security (Open Long Term Benefits Scheme) Ordinance 1997; and for matters connected thereto be read a first time.

Question put. Agreed to.

SECOND READING

HON J J NETTO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, it is generally known that there is in Gibraltar as elsewhere a significant amount of what people tend to call "illegal labour". Illegal labour is labour that is not duly registered under the various laws that requires registration. Government have been in receipt for some time of calls from both the Chamber of Commerce and the Transport and General Workers Union to introduce legislation that will effectively combat illegal labour. Both and others have been consulted in respect of this legislation. Illegal labour affects adversely everybody except the employer of the illegal labour. The illegal labourer himself, or herself, suffers because in the absence of Social Insurance contributions the worker loses his or her entitlement to health care, to statutory benefits and to an Old Age Pension. The other companies in the sector, that is the employers' competitors suffer because their competitors have lower payroll overheads and wage costs and can therefore compete unfairly on prices with companies that pay their dues on legal labourers. The general body of taxpayer also suffers because of the loss of PAYE, Social Insurance contributions and ETB revenue. If everyone that should pay tax did so it would be easier to reduce tax rates for everyone else.

Finally, but not least, our own unemployed, especially the young, suffer because unregistered jobs tend to go to non-residents who are less likely to complain. This deprives our own residents of job opportunities. Mr Speaker, for the legislation to be effective, as everyone wishes it to be, it must act with a real deterrent. There is no point in imposing fines which are so low that unscrupulous employers will be willing to risk getting caught and then paying a low fine. The present legislation introduced by Opposition Members when they were in Government imposes a fixed fine of £20 per day. The problem is that it is almost impossible in most cases to prove the length of time that an illegal employee has been employed. When an inspector finds such an employee the tendency is for employers to claim that the illegal employee has only just been engaged. It is therefore very difficult to impose the current fine of £20 per day for the period of the actual employment. The existing legislation is therefore tough in theory but not sufficiently effective in practice. This new Bill does not create new registration or other employment rules, nor in general does it create new offences. The Bill is not a self-standing piece of legislation. Its Long Title makes it clear that its purpose is to bolster the enforcement of the following Ordinances:

1. The Employment Ordinance;
2. The Income Tax Ordinance;
3. The Social Security (Insurance) Ordinance;
4. The Social Security (Employment Injuries Insurance) Ordinance;
5. The Medical (Group Practice Scheme) Ordinance; and
6. The Social Security (Open Long Term Benefits Scheme) Ordinance 1997.

Clause 3 of the Bill sets out the powers of Inspectors. Inspectors will have powers of search and entry. The substance of this clause follows similar provisions elsewhere in our legislation. In this context the attention of the House is drawn to, for example, section 43(2) of the Social Security Employment Injuries Insurance Ordinance. Clauses 4 and 5 represent the core of the legislation. Clause 4 makes reference to Schedule 1 which sets out, in respect of what offences inspectors will be

able to serve fixed penalty notices under Clause 5(2). As the objective of the Bill is to tackle unregistered labour, the offences appearing in paragraph 3 of Schedule 1 therefore only concerns a duty to register, whether it be for employment, tax or social security purposes. The Bill establishes the fixed penalty notice fine at £1,500 for a single or a number of offences relating to the same employee. The Bill makes the employer, and not the employee, liable to the fixed penalty. Clause 5 makes provisions for fixed penalty notices. The general scheme of the clauses is, once again, standard in our legislation. Similar provision will be found, for example, in section 99 of the Traffic Ordinance and also in the Litter Control Ordinance. Under Clause 5 an inspector will have the powers to impose fixed penalties on any person found in breach of any provision quoted in paragraph 3 of Schedule 1. Persons served with such notices will have 14 days to settle the fine which, as I said before, is £1,500 if the fixed penalty notice is paid. An employer is not obliged to pay the fixed penalty notice. If he fails to do so either because he simply fails to do so or because he wishes to challenge the allegation in the Court, he can simply wait to be prosecuted for the underlying offences. The Fixed Penalty Notice itself is not a binding adjudication of the matter and does not create a legal obligation to pay. Upon conviction of the offences in court, the fine is fixed at £2,000 per offence. The court will also impose a fine of £2,000 per week that the offences continue after the issue of the Fixed Penalty Notice. To enhance the effectiveness of the legislation, clause 8(1) provides for fines to be recoverable summarily as a civil debt. In addition, Mr Speaker, the legislation seeks to clamp an existing loophole where people work in Gibraltar but are employed by companies abroad who are out of the reach of our law. The Bill seeks to deal with this by providing that where the employer has his principal place of business outside Gibraltar the employer shall be deemed to be the principal contractor on the site or the person that carries on business in the place where the illegal worker is working. Mr Speaker, the Government will make administrative arrangements and, if necessary, will introduce legislation to ensure that these new provisions do not apply in practice to casual employees who are already registered for employment, tax and social insurance purposes in respect of their principal employment in Gibraltar. This will avoid the need to register people who are properly registered in respect of their main job but who do extra casual work, perhaps for another employer, in their spare time. The obligation to pay tax on such earnings will, of course, remain as at present.

Finally, Mr Speaker, Government intend to delay the commencement of the Bill by 30 days to allow employers to regularise their employees

including resident Moroccans whose employment they may not have been able to regularise in the past. Government will assume that all employees registered during the next 30 days have commenced work on the date of registration. I commend the Bill to the House.

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

HON J L BALDACHINO:

Mr Speaker, without any doubt, as the Minister said, this is a tough legislation. It is a draconian legislation. Because of that we have certain reservations, particularly the way it has been drafted. Obviously the Bill gives wide power ranges to the inspectors, in most cases more power than what normally our Law Enforcement Agents have. Nevertheless, Mr Speaker, and putting that we have certain reservations on the way it has been drafted, and if the Government feel that such draconian measures are needed to stop illegal labour and give more opportunities to Gibraltarians, we will be supporting the principle of the Bill even though we reserve our right, in the Committee Stage, after we have been given certain explanations, to vote in favour or against certain clauses of the Bill. We require some explanations and clarification of certain aspects of the Bill. We would like to know if the Government have legal advice on the constitutional powers of this House to command and instruct a Judge or court to what should be the minimum fine to be imposed if an offender decided to challenge the fixed penalty fine through the Courts. I say this because when we were in Government, the advice that we had was that we could not legislate giving the maximum fine the court should impose, the minimum yes but the maximum no as this could be construed as interfering with the independence of the Judiciary. The most we could do was to make our feelings known when moving or introducing the Bill in this House and when debating it. Indeed, this must also have been the advice given to the AACR when they were in Government as it was also given to us in answer to questions in this House at that time. But if the Government have been given different advice and it is possible to legislate in such a way, there is no reason why this House should not take this into account when legislating in future dates especially on criminal offences. The other thing is that if this is the case, there is nothing stopping us looking into those already in our statute books especially those which relate to drug trafficking. The commencement date will be 30 days from passing in this House but we would also like an explanation why the Government need a requirement to have different dates for different provisions for the purposes of this

Bill? According to the Bill, it says that certain things might not be implemented as a whole but different pieces can be left out and implemented at a later date. We would like to know why this is the case. As I said, Mr Speaker, we will be voting in favour. Obviously we do not want employers to have illegal labour but we reserve our judgement on certain parts of the Bill to Committee Stage when we might either be abstaining or voting against or in favour.

HON CHIEF MINISTER:

Mr Speaker, the hon Member referred twice to the fact that he thought it was draconian, but he has not explained why he thinks it is draconian. I do not know whether he is simply repeating what he has heard or read in the press issued by the Chamber of Commerce. I notice that they used the word "draconian" but I have to say that they use the word "draconian" on the basis of a complete misconception, a misconception which I explained to the President of the Chamber of Commerce at lunchtime on Friday before he had issued his press release and having had the misconception explained to him he nevertheless goes and issues a press release describing a piece of legislation as "draconian" on the basis of what the legislation does not say. I am afraid that there is no way of preventing things like that from happening – at least none that I can readily think of. Mr Speaker, contrary to what the Chamber of Commerce has said, and as I told the President of the Chamber of Commerce when he came to see me on Friday clutching a very early draft of the legislation, I said "that is not the Bill as it has been published. Have you not read the green paper that has been published?" The Chamber of Commerce are under an erroneous impression that one has to pay the fine in order to get a day in court and that is not true. The statement issued by the Chamber of Commerce says that by making people pay the fine before they appeal we are interfering with the principle that we all hold dear, mainly that one is innocent until proven guilty. Mr Speaker, Gibraltar can waste its time debating things on the basis of fairy tales or we can spend our time debating the legislation that the Government actually publishes and which is before the House. The legislation does not require one to pay a fine before ones appeal. Indeed, there is no appeal. The system introduced of fixed penalty notice is exactly the same system as applies with parking tickets under the Traffic Ordinance or with litter tickets under the Litter Ordinance. The administration does not decide that one is guilty and makes one pay a fine. The administration says "we think that you are guilty, here is a parking ticket" ...now obviously it is a fixed penalty notice, as they are called, "you may pay if you wish. If you do not pay it you will be

prosecuted if the decision to prosecute is made just as occurs with litter notices and with fixed penalty tickets but you may choose not to pay the fixed penalty ticket and wait to be prosecuted in the ordinary course of events". Therefore, views expressed by the Chamber, based on this idea that unless one pays the penalty first one cannot appeal against the fixed penalty notice are misconceived firstly because the fixed penalty notice does not create an obligation to pay. One can simply not pay and wait to be prosecuted and secondly because there is no question of appeal. One's rights have not been adjudicated against the first instance and therefore it is not appealing to the court, it is simply saying to the administration "I challenge the fixed penalty notice. I am therefore not paying it. You take me to court", which is exactly the regime which is well established in law in several other fixed penalty regimes that already exist. I do not know if the hon Member felt that that is why he thinks the legislation is draconian. But if he felt that that was the reason, then he need not worry about that because in fact the legislation says nothing of the sort. I remember that in an early draft of the legislation, where the Government and the Chamber were consulted closely about this... and let us not forget that this is legislation that the Government have been under some pressure from the Chamber of Commerce and the Transport and General Workers Union for some time to introduce. The Chamber expressed the view that they thought that it was unfair to be made to pay the whole fine before one could act at the court and at that stage when the Government were thinking of a different system we agreed to reduce it to half. After that we decided to abandon that system altogether and use the existing fixed penalty notice which left people's right to access the court completely intact without the need to pay any part of the fine as we can now do if a policeman issues a parking ticket or a Litter Control Officer issues a litter control ticket. Those statements by the Chamber of Commerce are not only completely misconceived but indeed it is made notwithstanding that the position has been carefully explained to them before they issued their statement.

Mr Speaker, the hon Member raises the question of the constitutional power to instruct a Judge. With the greatest of respect I think that the hon Member is confusing two very different points here. The law of the land is made by the legislature, which is us, which is a parliament. If the legislature wants to say in a law "the fine shall be fifty pence" then the fine is fifty pence and the function of the court is to enforce the law as it is passed by the legislature. If the legislature passes a law that says that if one is convicted of an offence one may be fined up to £500 or one may be sent to prison for up to three years, that legislation gives the judge a discretion. It is up to the judge to decide up to the maximum

imposed by the legislature what sentence he gives. Of course it would be wrong for anybody to interfere with the exercise by a judge of a discretion given to a judge by an Act of Parliament. But that is very different from a situation where a piece of legislation does not give the judge a discretion and there are such bits of legislation.

Hon Members will know that if one commits murder and is convicted of murder one is sentenced to prison for life because the statute says that upon conviction of murder there is only one sentence open to the court. The concept of fixed penalties in legislation is not new either in Gibraltar, let me tell hon Members that it is becoming increasingly common in the United Kingdom where the legislature is perfectly entitled to impose a fixed penalty in legislation. That is not interfering with the independence of the Judiciary. The independence of the Judiciary means that no one interferes with the Judiciary in its application and enforcement of the law as it is but it is not for the Judiciary to decide what the law should be, it is for the legislature to decide what the law should be and then the Judiciary must be allowed, free of interference, to implement and enforce whatever constitutional law the legislature has seen fit to introduce. Obviously, the constitutionality of a law can be challenged in court, but that has got to be a law that this House might pass in breach of an explicit provision of the Constitution and there is no provision in the Constitution that says that the legislature cannot stipulate what the fixed penalty for breach upon conviction of a particular offence might be. Indeed, Mr Speaker, Opposition Members well know that the concept of fixed penalties is not new. After all, when they introduced legislation in this area, I think it was in 1994, they introduced the £20 per day fine. If the hon Members think that by Regulation they can introduce a fixed penalty of £20 per day, I do not know why they think that this Parliament cannot introduce a piece of legislation that specifies what the penalty is. It is a matter of policy to the Government that the eradication of illegal labour is a matter of policy which is not properly addressed by allowing a discretion to the Courts to impose fines which perhaps may be so low in the exercise of the discretion if they were given one so as to render the policy ineffective in its application. This legislation is entitled to be a deterrent. Hon Members think that there is something inevitably and necessarily wrong with draconian legislation. Draconian legislation is perfectly justified when the objective of it is sufficiently important. I do not accept that the simple use of the word "draconian" renders this legislation valid. I just do not happen to think that this one is particularly draconian. As to, for example, the question of the range of penalties, I can understand that employers, particularly employers with a notorious track record for illegal labour, I do not understand how such employers

would find a fine of £1,500 high. But let us not confuse the question of the level of the fine with the question of the Courts discretion. After all, if I had said in this legislation that the court can fine between £1,500 and £3,000 that would have given the court a discretion but above the level of £1,500. Therefore the points are very different ones. Of course, this business of £1,500, as to whether it is stricter or less strict than the present regime of course depends for how long one has employed an illegal person, because at £20 a day, I have not done the arithmetic and I am not quick enough on my feet to work it out, but £1,500 divided by twenty is... how many days? 75 days, so under the present regime if one employs somebody illegally for more than 75 days, one is actually worse off than under the new legislation. But, of course, the new legislation will be harsher on people that have illegal labour employed for less than 75 days. The hon Member says that it is draconian. I do not believe it is draconian. He has not explained why he believes it is draconian. It is not so much different in terms of the level of the fines, although the present regime applies it on a daily basis. The reason why we have gone for a lump sum, so to speak, is as the Minister has explained, that it is actually very difficult in practice to prove the period of time for which illegal labour has been employed and therefore one can never establish the proper period for which one can impose the fine of £20 per day.

Mr Speaker, I take the hon Member's point in respect of the commencement date. I think he made two different points there, if I understood him correctly. First of all I think he asked why there was a need for a 30 days delay. That is a matter of choice for the Government. The Government want to give employers the opportunity to regularise their employment. Obviously the existing law will remain in operation for the next 30 days but it is just to give people an opportunity to regularise their affairs before the inspectors start enforcing the new law. As to the second point that he made, why different days for different purposes, in terms of commencement, that, as he will recognise from other legislation, is a standard commencement clause. It is not there because we envisage in this particular legislation different commencement dates for different clauses, I think he would find that it is more or less standard in legislation. I am not aware of any present intention to commence different bits of this legislation at different times. Indeed, the legislation does not lend itself to that sort of breakdown in commencement dates between different parts of the Bill.

HON J J BOSSANO:

Mr Speaker, I am surprised by the nature of the reply given that I would have thought...

HON CHIEF MINISTER:

That is not my reply, that is my contribution, my reply will come at the end.

HON J J BOSSANO:

Mr Speaker, he has given a reply to the questions that have been asked. I do not know if we are going to get the same replies from the Minister that moved the law or a different reply but I cannot react to his reply. I can only react to the reply we have had to date. I am reacting to the reply on the points that have been made. Certainly, the expression of this law as draconian has nothing to do with what the Chamber of Commerce may or may not have said on Friday to the Chief Minister or the reply that the Chief Minister may have given because we are not aware of the earlier draft of the legislation, we are only aware of this. We are basing our analysis on what we have before us. Throughout the explanation that we have heard there has been a constant reference to the fixed penalty in a way which draws no distinction between what the fixed penalty is and what the fine is and we are not looking at the element of the fixed penalty. The fact that there is a fixed penalty of £20 or a fixed penalty of £1,500 is not something that we have questioned at all so the whole business of the arithmetical advantages or disadvantages if one employs people illegally for 75 days more or less has nothing to do with anything we have said so far. It is not an issue that we are questioning. What we are questioning is whether it is possible for this House to alter the legislation which was introduced in 1992 which says "you are liable to a fine at level four" and says "you shall be fined at level four". That is the difference which makes this mandatory on the courts, that is what the Explanatory Memorandum tells us. The Explanatory Memorandum says that upon conviction the court is mandated to impose a fine of £2,000 with respect to each such offence. As far as I am aware, in the 26 years I have been in this House we have never mandated the courts to impose a fine. We have always, in the law, said that a person is liable to a fine and the words that have been used in amending the law is that the words "liable to" are being substituted by the words "shall be". That is where there is an important issue of principle being raised which is not limited to the question of employment

that goes across the whole question of whether we in this House should in fact look at legislation which is a point that was being made on the basis that we shall say to the courts "you shall fine people so much". When the AACR brought legislation in 1985 to tighten a loophole in the law on the basis of illegal labour, where people were being shown as company directors and not paying social insurance and so forth as a result of the movement of labour after the opening of the frontier, I think anybody who cares to go back and look at the Hansard will find that when I questioned the problem that there was in imposing in the law a higher maximum fine which then had no effect so that people were being taken to court and the Magistrates' Court was putting a fine of £10, even though we had moved to £500 in the House, the explanation I then got from Sir Joshua Hassan was that in fact the advice that they had was that the legislature did not have the power to do that and all that we could do was by putting a higher fine as a maximum and by saying it here in this House we would hope to send a message to the Judiciary that we were looking and then to take into account what was the will of the House in their sentencing policy. The Chief Minister is professionally better equipped than I am to question the legitimacy of that argument. All I can say is that it is an argument that I have heard in Opposition and in Government and we have always assumed that the professionals who were telling us that knew what they were talking about because in fact that is why, when we legislated, we moved to fines at different levels in the hope that at least that meant that if there was a level of £1,000 and a level of £2,000 and the legislation said "a person shall be liable to a fine at level 4" which is £2,000, at least they would not be fined below the £1,000. But we have found that even that was not the case, that they could go the level below that.

HON CHIEF MINISTER:

Would the hon Member give way? Mr Speaker, obviously I was not in the House at the time and it is not for me to defend the views of Sir Joshua but the hon Member knows that we often legislate imposing fixed penalties. For example, we have passed legislation on numerous occasions imposing mandatory forfeiture. There are circumstances in which the Court is now required to order forfeiture of vehicles and boats and things of that sort and therefore far from being constitutionally challengeable the issue of the legislature passing laws which leaves the court no discretion at the time of sentencing, obviously not at the time of convicting, and say that one is not guilty, but if it finds one guilty the legislature says to the court "if you find somebody guilty you must fine him this" or "you must impose the following sentence", that, far from

being unconstitutional, is perfectly well preceded in our existing legislation, not just on custodial sentences on the question of murder, for example, but in forfeiture. I accept this is the first time that that existing provision has been extended to the quantum of a monetary fine. The monetary fine is not qualitatively different from a fixed custodial sentence or a forfeiture, they are just three different types of sanction.

HON J J BOSSANO:

That may be the case, Mr Speaker. All I can say is that that is not the view that was put in eight years that we were in Government or in the previous years to the previous Government and it was never previously questioned because we assumed that that was the accurate explanation of the position. As I was saying, before I gave way to the Chief Minister, that indeed part of the rationale for moving to different levels was to try and put an indicative floor which even then has not operated, let me say. There have been occasions when although we have said a person shall be liable to a fine at level four, the Judge has imposed a fine of less than level three. That again seemed to support the explanation on the fines. If we take it that it is permissible to do this and I do not know whether it is that that point has been addressed and the advice that has been given now is different from the advice that has been given previously or that it has been taken for granted that it is permissible without being looked at, I am not sure which of the two it is, but if it is permissible then let me just say for the record that the nature of the argument that was put to us before when we looked at this kind of possibility in terms of toughening the legislation, to use the words of the Minister, the explanation was that for example it deprived a person in his defence putting mitigating circumstances. It did not distinguish between a first offender and somebody that had been consistent and deliberately caught between the law and having no disregard and wanting to get away with it. Therefore, those arguments that could be used in a court by the defence in doing justice to the person that was being prosecuted, even though he may be convicted... after all, it is difficult to see how one can go to court and not get convicted over something that factually can only be either one way or the other. Either the person is registered or the person is not registered. But of course if one goes to court and said "I took on a new employee last week" and the new employee thought that they had been registered by somebody who was on sick leave and the person had not registered them, all those arguments which the Chief Minister would have before he was in Government used in court to defend a client employing so called illegal labour, he is now preventing his colleagues in the profession from being able to use. If we can do that, fine. We were

told that that could not be done because in fact it was minimising the right of people to go to a court of law and argue a case as to why they had not complied with certain requirements. Let me say that the other thing of course in the law is that the seriousness of the offence to which the laws refer, as I understand it from reading the law in the time we have had it, I would be grateful to be corrected if I am not right, but my understanding of reading the law is that one gets fined £2,000 whether one has got employees whose PAYE one is deducting and pocketing and not declaring, or whether one fails to tell the Employment Board that somebody left ones employment and one never got round to registering them. It is difficult to see that these things are equally heinous and serious.

HON CHIEF MINISTER:

Mr Speaker, most of the offences, indeed all except that, relate to registration because these are ways in which the Government can know that somebody is in employment and therefore pursue them for ETB fees, tax or social insurance. The one that relates to deregistration at the ETB relates to the fact that if employers do not notify terminations the hon Member knows that it becomes very difficult for the Government to use employment to compile proper employment statistics based on the opening of vacancies, on the closing of vacancies and certainly that is a policy decision. The Government wish to create a deterrence against employers failing to comply with what is their legal obligation to notify employment so that the Government can have a better chance of having proper employment statistics at hand, not just for the purposes of information, but also for the purposes of economic planning.

HON J J BOSSANO:

The Government may wish to do that but let me say that that explanation is not in fact reflected in the purpose of the Bill which is to take much more tough measures to prevent illegal labour because as I have said not telling the ETB that somebody has left ones employment who was previously recorded with them which meant that it was legal labour is not saying that the person is being punished by £1,500 fixed penalty or that he has to be fined £2,000 because he is employing illegal labour because, strictly speaking, he is not employing anybody and that the people that he is no longer employing were not illegal labour anyway otherwise there would be nothing to notify the Board about because the Board would not know the people were there. So what they are talking about is the termination of employment of legal labour is being treated

as serious an offence and even hear the argument about mitigating circumstances even stronger, I would have thought. Let me say that the answers we have been given in this House in respect of that particular offence... the Government must be aware, indicates that there are in the region of 2,000 workers no longer working, registered with the ETB – the so-called “open contracts” and that therefore if in the next 30 days the employers fail to tell the ETB who these 2,000 are, under the law we are passing they become liable to either £3 million in fixed penalties or £4 million in fines or if they fail to cooperate with the inspectors, £10 million because then they become liable to level 5, which is another issue which is that it seems a new principle in legislation that somebody that is accused of not helping the inspector to catch him out is then liable not to £2,000 but to £5,000. The other point on constitutionality that we have had put to us in the past when we have looked at different... not just in this area but in other areas, has been that if in fact people have got the right to appeal not just against the conviction but against the severity of the sentence, then this law makes it impossible to appeal against the severity of the sentence, they cannot use the mitigating arguments in the first instance and they cannot use it to appeal against the sentence in the second instance. Apart from those political issues which are not directly relevant to employment issues, let me say that I think one of the problems with making the legislation too rigid in terms of possible discretion is that in some cases if the effect of it is that people are bankrupt as a result, then instead of creating more jobs one finishes up creating less and it is always a difficult situation. Many, many times any Government are faced with a situation that actually closing somebody down because they are not paying PAYE or whatever, does not solve the problem for anybody and employers have used that situation in the knowledge that they are protected because of concern for the welfare of employees from the Government taking action. But I think if one makes everything mandatory then even if there are occasions when one thinks it is perhaps not the wisest thing to do I do not think that one is leaving oneself any way out and that is in terms of possible effects in the level of employment. Let me say that the argument that has just been put when I gave way to the Chief Minister as to a policy decision in order to improve the quality of the statistics, I am of the view that provided this law is effective in requiring the people to be properly registered for PAYE then that will be the most reliable statistics the Government can have because one thing is for certain, nobody is going to be continuing PAYE payments after the employee has left so we do not need to punish them for doing that. If they do that I am sure the Government will not complain. The problem with the registration, and it has been a problem for some time, is that there is a tendency for people to be concerned

about registering them when they are taking them off but perhaps to leave in abeyance, overlook and the things goes into a period of time when there may be a delay but I would have thought that within the returns that are made, frankly, the ETB, subject of course to it having the necessary resources to do it, it is possible to analyse the returns from employers particularly if people are taking people on. If we are talking about a situation where 4,000 people are taken on in the private sector in 1998, it must be obvious that 3,500 or more must have stopped being employed in that year; otherwise the private sector would have gone from 8,000 to 12,000 between 1997 and 1998. If people have started employment in 1998 and there were 4,021 I think the figure was, then nobody can possibly believe that that is 4,021 additional workers in the economy in the private sector because that would mean that the private sector was expanding at the rate of 50 per cent per annum. If it were, then why is the private sector making representations to the Government which the Government say they take seriously as to the nature of the difficulties that they face in prospering if they are employing 4,000 new workers every year.

HON CHIEF MINISTER:

Would the hon Member give way, I would be grateful to him. Mr Speaker, I entirely agree with the hon Member that in theory accurate employment statistics are available from the Income Tax Office for the reasons that he so colourfully explained. The problem as I am sure he also knows is that there is a view taken in the Income Tax Office about section 4 of the Income Tax Ordinance about the extent to which they are free to share that information with other parts of Government. I suppose we could correct that by amending section 4 of the Income Tax Ordinance to make it clear that when the law talks about tax confidentiality it means ones individual tax liability. It does not mean that one cannot even inform the employment department that somebody has given the Commissioner of Income Tax notice that he is no longer working. The Income Tax Office interprets tax confidentiality very narrowly and very strictly and I suppose that could be addressed by making it clear what tax confidentiality actually means. I have to say that I tend to share the hon Member's opinion that it seems inappropriate to penalise illegal labour no more harshly, or put it another way, to penalise failure to notify the termination of a legal labour to penalise that as harshly as having taken them on illegally in the first place. Mr Speaker, I think that that is a good point, well made and during the Committee Stage we will contemplate introducing an amendment to reduce the level

of the fine to which the latter category, namely failure to register termination is subject.

Question put. Agreed to.

The Bill was read a second time.

HON J J NETTO:

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

Question put. Agreed to.

THE PUBLIC HEALTH ORDINANCE (AMENDMENT) ORDINANCE 1999

HON K AZOPARDI:

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

Question put. Agreed to.

SECOND READING

HON K AZOPARDI:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this is a short Bill. For some years hon Members know that the Government have controlled the issuing of licensing of sandwich boards. It was thought by the Department and the Legislation Unit that the terms of the Ordinance that regulated that licence had to be clarified and this is the purpose of bringing this legislation to the House. I commend the Bill to the House.

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

HON A J ISOLA:

Mr speaker, we do not really quite understand the need in the sense that notwithstanding the amendment proposed to the Public Health Ordinance, there is already in place in the town Planning Ordinance, a whole list of items which specifically refer to advertisements of this nature. In fact, there is a Control of Advertisements Regulation in the Town Planning Ordinance which is I think up until now Government have exercised control on sandwich board advertising. I assume that notwithstanding the amendment to the Bill going through even though Government may give a permit under the Public Health Ordinance it will still be required to apply for approval under the Town Planning Ordinance because it is certainly captured under the Town Planning Ordinance and there is nothing here which says the Town Planning Ordinance will not apply in respect of these advertisements. I am not really sure whether what we are doing we are doing because the proposal says, "It shall be lawful for any person with the prior consent of the Government, to place advertising boards or any other manner of advertising on such part of any street as may be specified in such consent."

I do not know if Government intend in that consent to put a condition that it is subject to approval under the Town Planning Ordinance or not but if it is not it would certainly seem to us that it would be in breach of the Town Planning Ordinance and therefore it is not much of a piece of legislation to bring without that proviso either here or in the certificate that is issued. Perhaps the Minister could clarify the points whether they would run side by side or not.

HON K AZOPARDI:

My understanding is that the applications are actually not being brought under the Town Planning (Control of Advertisements) Regulations but actually have been issued, the licences have been issued under the Public Health Ordinance for some time now since the days of Crown Lands. The reason being that Regulation 5(3) of the Control of Advertisements Regulations makes it clear that it applies only to advertisements which are at least a level of 2.44 metres from the level of the ground and so therefore it was considered that these do not apply to sandwich boards, historically. Given the fact that the Town Planning Ordinance is being amended, and the hon Member will know that I issued a consultative paper on that issue in November and we are now collating the last comments, we are now taking those into account to

present the Bill to the House, the Department is in close consultation with the Legislation Unit. This issue cropped up, it was decided that as applications were not being brought under the Town Planning (Control of Advertisements) Regulations for the reasons that I have stated and that they were rightly being issued under the Public Health Ordinance, the Ordinance itself, the latter Ordinance, the Public Health Ordinance, was not specific enough that an amendment should be brought to make this clarification and this is the reason why this Bill is before the House. I hope this explanation clarifies the question the hon Member had.

HON A J ISOLA:

I do not quite understand because in fact if Regulation 5(3) does not permit a sandwich board which is 2.44 metres from the level of such street then if one issues a permit under this Ordinance for a sandwich board which contravenes the Town Planning Ordinance, how does one take it from there?

The House recessed at 11.55 am.

The House resumed at 12.05 pm.

HON K AZOPARDI:

The hon Member and I have had an opportunity to discuss the point he is making and I think we now understand the issues that we are discussing. I do not know whether the hon Member wants to put his suggestion?

HON A J ISOLA:

Mr Speaker, what I would suggest and as my hon Friend said, we discussed it and the suggestion would be for in the Town Planning (Control of Advertisements) Regulations to put in a proviso to Regulation 5(3) which is basically at the beginning of that, simply saying "subject to the Public Health Ordinance", and then it would carry on, in which case the permit would not be prohibited by this Ordinance and allowed in the other Ordinance.

HON K AZOPARDI:

Yes, Mr Speaker, I am grateful to the hon Member for raising that matter. I certainly will take on board that and amend the Regulations in the manner he suggests. Obviously it does not require an amendment to this Bill but a consequential amendment on the passing of this Ordinance.

Question put. Agreed to.

The Bill was read a second time.

HON K AZOPARDI:

I wish to give notice that the Committee Stage of this Bill be taken today.

Question put. Agreed to.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

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

1. The Tobacco Ordinance 1997 (Amendment) Bill 1999;
2. The Employment Regulation (Offences) Bill;
3. The Public Health Ordinance (Amendment) Bill 1999.

THE TOBACCO ORDINANCE 1997 (AMENDMENT) BILL 1999

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

Clause 2

HON CHIEF MINISTER:

Mr Chairman, I have an amendment as I indicated on the second reading which I would like to move. In clause 2(1) it should read "The

Tobacco Ordinance 1997" and not just "The Tobacco Ordinance" that is so that it is consistent with the references to the Tobacco Ordinance 1997 in the Short Title and in clause 1, in both places of which the date of the Ordinance is included, unusually for Gibraltar, but it is. Therefore, for consistency, the date should appear also in clause 2(1).

In clause 2(2) of the Bill, there is an omission, clause 2(2) reads "Section 2 shall be amended by substituting for the words 'having three or more wheels' the words 'having two or more wheels'" but it does not say where in section 2. Section 2 of the principal Ordinance, if the hon Members were to look at it, is the definition Ordinance and there are many definitions. Clause 2(2) is intended to amend the definition of the words "motor vehicle" but does not actually say so and therefore the amendment that I propose to clause 2(2) of the Bill is to add after the words "two or more wheels" the words "where they appear in the definition of motor vehicles" so that we are all clear what part of section 2 we are amending. It is in a sense a housekeeping and not a substantive amendment to the Bill. It is really just to specify that the part of section 2 that we are amending is the definition of "motor vehicles".

HON J J BOSSANO:

Am I right in thinking that that means that a bicycle is now a motor vehicle?

HON CHIEF MINISTER:

Mr Chairman, it is not a vehicle upon which you can smuggle cigarettes apparently. Let me explain to the hon Gentleman how this amendment arises. For the purposes of the offences of transporting tobacco without a licence in the principal Ordinance it was said that if one transports tobacco on a motor vehicle, motor vehicle was defined in the principal Ordinance as being four-wheeled cars. What we are seeking to do here is to include motor bikes. The hon Member might say "well, are you sure you do not also want to include bicycles?" but this is to include motor bikes in a definition of motor vehicles from which it had been excluded in the principal Ordinance by omission.

HON J J BOSSANO:

I am not suggesting to the Chief Minister that he might want it to be included. I am suggesting that he is including bicycles because in fact the definition says "motor vehicles means a mechanically-propelled

vehicle intended for use on roads having three wheels" and he is now going to say that it is a mechanically-propelled vehicle intended for use on roads having two wheels, whether driven by internal combustion engine, electricity or by any other source of power. I am asking whether that includes a bicycle or not?

HON CHIEF MINISTER:

Mr Chairman, the hon Member must know that the phrase "motor vehicle" necessarily excludes pedal power. A motor vehicle is a vehicle mechanically propelled whether driven by internal combustion engine or by electricity or by any other source of power. It is of course up to a court to interpret that but I would hazard advice that the proper interpretation of the phrase "motor vehicle" is that it cannot include a bicycle which is propelled by human power.

Mr Chairman, in clause 2(3)(b) I would like it to be amended by deleting from the words to be inserted the reference to (6) and also the words "being convicted of an offence contrary to this Ordinance or any one or more of the following enactments". Mr Chairman, the reason for that is entirely secretarial and in no sense changes the meaning of the intended amendment. The reason for that is that as the amendment Bill now stands we are adding words, namely "being convicted of an offence contrary to this Ordinance or any one or more of the following enactments, namely..." which are already in the Ordinance and the effect of including them in the words to be added... they are added again but they are not deleted from the deleting section and the reason why those words are deleted is simply to avoid them being repeated twice. It is an entirely secretarial point and does not alter the nature of the amendment introduced by the Bill as now amended.

In Clause 2(5) there are substantive amendments to this extent. In the first place, in sub-clause 2(5) which amends section 6 of the principal Ordinance, the heading "Appeals" should be replaced... of course titles do not constitute part of the law but nor should they be misleading, that should read "Review of Decisions" as opposed to "Appeals" on the basis that a Judicial Review is not actually an appeal but a review of an administrative decision. Mr chairman, the reference to (1) after "(8)" should be deleted and the words inserted at the beginning of amended section (8) "subject to any relevant rule of law" so that section would read "subject to any relevant rule of law any person who is aggrieved by". The words "by a procedure known as an application" should be deleted on the basis that they are completely superfluous and add

nothing to the meaning of the sentence, so that should now read "may apply to the Supreme Court for Judicial Review in accordance with rules of Court" as opposed to "may apply to the Supreme Court by a procedure known as an application for Judicial Review" and that is just verbiage which adds absolutely nothing to the fact that what one is giving people is a Judicial Review. Sub-clause (2) is to be deleted altogether. As those amendments may be difficult to follow I have taken the step of setting out the new text of the section as it will read as amended in the letter proposing the amendments. Starting just a third of the way down page 2, just for the benefit of Members' ease of following the amendments, Members will see how clause 8 will read if all these amendments that I am now proposing are carried. Members will see that there is no amendment to (a) (b) or (c) which are the substantive parts of the section 8 and what there is is tidying up language and correcting the title so that it should not be misleading. Mr Chairman, clause 2(7) shall be amended by deleting the full stop and adding the words "and are" substituting the word "cigarettes" for the word "tobacco" in the Title.

The point there is that clause 2(7) purports to delete the reference to tobacco and replace it with a reference to cigarettes for reasons that the hon Members are familiar with in the text of section 11, but omits to correct the heading, the title, of section 11 which also refers to tobacco. The purpose of the amendment is simply to change the reference from "tobacco" to "cigarettes" in the title to section 11 and not just in the main body of section 11 itself.

In Section 2(9)(b) we seek to delete on the basis that the amendment that it seeks to introduce, in other words, substitute the word "cigarettes" for the word "tobacco" was already done in Ordinance No. 34 of 1997. On page 52 clause 2(9)(b) is deleted altogether on the basis that that amendment has already been done by Ordinance No. 34 of 1997 and therefore does not need to be done again.

Clause 2(11), inserts a number of new clauses into the Tobacco Ordinance 1997, firstly new clause 17(b) is inserted. New Clause 17(b) shall be amended by substituting for sub-clause (1) the following sub-section:

Mr Chairman, I can read it out for the purposes of Hansard if you prefer but it is set out in my letter. I can just perhaps explain and point out to the hon Members what in fact the amendments are as compared to the text in the Bill. Mr Chairman, the Draftsmen, after the publication of the Bill, pointed out that the language in 17(B)(1) and indeed in other places

in the Bill where it appears, is ambiguous and I will explain to the hon Members how. If they read section 17(b)(1) as it is in the Green Paper, it reads "a Police or Customs Officer may require any person who they reasonably suspect is concerned in the importation or exportation of cigarettes, or in the transportation or possession of tobacco, or in the transportation or possession of cigarettes..." that is just a simple repetition, "...in circumstances contrary to the provisions of this Ordinance" and somebody asked "Does that mean that only the last of the three mentioned circumstances needs to be in circumstances contrary to the provisions of the Ordinance?" It is sui generis ambiguous, where of course the intention of the legislation is that any of them needs to be in circumstances contrary to the provisions of this Ordinance. In other words, whether one is importing or exporting cigarettes, that has to be contrary to the provisions of the Ordinance, or whether one is in possession, or whether one is transporting cigarettes, that also has to be in circumstances contrary to the provisions of the Ordinance and the view was expressed that by adding that qualification at the end whether there was doubt about whether the qualification applied to the whole list that precedes it or just to the last item on it. The first amendment that is introduced is that in the second line, after the word "concerned" where it reads "a Police or Customs Officer may require any person whom he reasonably suspects is concerned..." there, add "in circumstances contrary to the provisions of this Ordinance". The Draftsman believes that by putting the words which appear at the end of the list, at the beginning of the list, it makes it clearer that it qualifies the whole of the list that follows as was always the intention.

Mr Chairman, the other amendment is to delete the words "or in the transportation or possession of cigarettes" which the hon Members will see have simply been typed twice there, they appear twice "or in the transportation or possession of cigarettes" or in the transportation or possession of cigarettes", just beyond half way down. Those are the only two differences between the new text of section 17(B)(1) and the existing text of section 17(B)(1).

Mr Chairman, new clause 17(C) which is also introduced by clause 2(11) of the Bill, in page 53 of the Green Paper, should be amended as follows: again the text of section 17(C)(1) as it will read after amendment, is set out below the list thereof, of amendments, starting just halfway down the page, it says "section 17(C)(1) will now read as follows". The amendments, Mr Chairman, are firstly by deleting the words "without prejudice to any other power conferred by this

Ordinance", those are the first words in the Green Paper in the clause. Secondly, by deleting "every part of any premises in Gibraltar or of", by deleting the words "or in those premises" and by deleting the word in sub-paragraph (a) "Premises". Mr Chairman, these are the points that we discussed during the second reading whether it was right that a Police and Customs Officer should have the power of entry into premises without a warrant. We know that they already have that power in respect of aircraft, boats and vehicles at points of entry. As drafted, the legislation would have given a power of entry without warrant into premises. We are going to leave it on this basis. I personally believe that there a distinction could be drawn between premises, that is, residential premises and commercial premises. I think the case for allowing Police and Customs Officers not to go into a residential premises without a warrant is much stronger than the case for not letting them go into a warehouse or a store without a warrant. Whilst I believe that they should require a warrant to enter a home without a warrant, I am much less clear as to whether that protection is really needed in respect of non-residential premises, but as the law will stand with the amendment that I am tabling for the House, they will need a warrant to enter into all premises without distinction and we shall simply keep an eye on how that works in practice and if we believe it is necessary to ensure the efficacy of the law we may come back to the House at a future date seeking the elimination of the need to apply for a Search Warrant in the case of non-residential premises.

Mr Chairman, in sub-section 1(b) of clause 17(c) delete the word "withheld" which is the last word in (b) and add the words "not available to the Police or Customs Officer", so that that sub-clause would be "break open any place or receptacle which is locked and of which the keys are not available to the Police or Customs Officer" instead of "break open any place or receptacle which is locked and which the keys are withheld". Withholding requires somebody to be there with the key who says "I will give it to you". These might be Officers that have properly gained access into the premises and therefore the purpose of this amendment is that the Police can break open the receptacle, not just if the key is there but withheld, but if the key is not there at all, if they cannot gain entrance. Those are the amendments to clause 17(c)(1).

There are amendments to clause 17(C)(2) and they are by substituting for sub-section 17(C)(2) the following subsection. Again, Mr Chairman, I will point out to the hon Members what the amendments are. This is a drafting technique, I am not sure that it is a good idea. The Draftsmen have come to the conclusion that some amendments are easier to

express by setting out the whole text rather than by amending and inserting words here and taking out words there but it does mean that one has to follow the text and compare the text to see where the legislation is changing. The amendments are these: in section 17(C)(2) reading from the Green Paper on page 53, it reads "A person who refuses" and there we would insert the words "in the circumstances described in sub-section (1) above". The refusal, in order to incur that liability, is not just refusal in any old circumstances, it has got to be refusal in the circumstances described in sub-section (1) and that narrows the scope of the power. So that would read "a person who in the circumstances described in sub-section (1) refuses..." and there we are eliminating the words "to stop of", so that would read "a person who in the circumstances described in sub-section (1) refuses to permit any...", we delete the word "premises" "vessel, aircraft..." and then it goes on in the same way. The additions are, the insertion of "in the circumstances described in sub-section (1)" after the third word "who" and the deletion of the words "to stop or" in line 1, and the word "premises" in line 2, so that it would read "any person who, in the circumstances described in sub-section (1) refuses to permit any vessel, aircraft or motor vehicle..." no longer "premises", "to be searched when so required by a Police or Customs Officer is guilty of an offence and is liable on summary conviction to a fine at level 5 on the standard scale".

HON J J BOSSANO:

Can I point out that in fact the Government are continuing the practice of making the alleged offender liable to a summary conviction to a fine of level 5. Why is it that they are not mandating the Judge to impose a fine at level 5? After all, if we look at the Employment Ordinance we are told, "that anybody that delays or obstructs an officer in the exercise of his duties under the Ordinance is guilty of an offence and shall be sentenced to a fine at level 5."

HON CHIEF MINISTER:

Mr Chairman, one could take that view. It is not the policy of the Government in every case to impose minimum sentences. We have done so in the case of the Employment Bill because they create mainly administrative offences. There are some countries, admittedly Gibraltar is not one of them, for example the Continental system of law draws a distinction between criminal offences and administrative offences. In our system of law and in the UK system of law we do not draw that distinction and breach of any law is a criminal offence. I think that there

is a distinction to be drawn between a legislation that introduces criminal offences, that seeks to prevent activity which the legislation clearly casts in the form of criminal behaviour, and legislation... Hon Members may not think that the distinction is sharp enough, and legislation which in a sense, and I am not talking about the Employment legislation, which creates administrative time offences, in other words, failure to register. Remember that the Employment legislation does not deal with the offence of not paying the tax, or the Bill that we took before, the Employment Bill, does not purport to deal with non-payment of tax or non-payment of Social Insurance contribution, it deals only with registration and one is left with a situation where even under the previous Bill, where theoretically one could be punished more severely for not registering than for not paying. The previous Bill deals with the non-registration whereas if one fails to pay the PAYE all that could happen is that one would be prosecuted in the ordinary way and the court will impose whatever sanction the court wishes to impose. Mr Chairman, there is no answer other than that. The fact that the Government feel that it is proper for the House to impose minimum fixed penalties does not mean that it ought to do so on every occasion. We have not opted to do so on this occasion. The penalties imposed by this Ordinance are pretty severe in terms of mandatory confiscation and mandatory forfeiture and we have just not proceeded down that road.

HON J J BOSSANO:

Mr Chairman, I do not think it helps to keep on talking about fixed penalties when we are talking about fines because that only leads to confusion as to which of the two it is. We are not talking about introducing fixed penalties in the Tobacco Ordinance. What I am saying is, here we have got a clause that we are amending which deals with the punishment that the Court may impose on a person who refuses to stop or to permit, premises, vessels, aircraft, motor vehicles, to be searched by the Police or the Customs. The same type of offence punished by the same level of fine, a fine at level 5, is mandatory if the withdrawal of cooperation is with an Inspector seeking information. If we take the two, here we have got a Police Officer running after a vehicle, and the courts may decide that in that case he gets convicted and although he may be fined £5,000 the court can fine him anything below £5,000. On the other hand we have got an Inspector who goes along to an employer and says "I am making an enquiry to ascertain whether the provision of the Ordinance as to registering labour" and the employer says "I am not willing to give you that information". In that case there is a mandatory £5,000 fine. It has nothing to do with being criminal or not, it seems to

me that we have got parallel failure of people subject to a law cooperating or not cooperating with the Enforcement Agencies.

HON CHIEF MINISTER:

Mr Chairman, I take the hon Member's point. It is not the policy of the Government to introduce fixed penalties, or rather, to introduce compulsory fines at a fixed level on every occasion that a similar activity is prescribed or punished or sanctioned. The fact is that in the case of the Employment Ordinance the regime of the whole Bill is fixed fines and it would be ironical and would debilitate the efficacy of the Employment Bill if, although it imposed fixed penalties, one could, in effect, frustrate the enquiry simply by withholding access to ones records which one knows is an important part of establishing how long somebody has been employed for, for example. Therefore, in the Employment Bill it is for consistency of philosophy running through that Bill. It is true that here is not a dissimilar power which is not subjected to a fixed fine. I think the situations ought not to be compared. In the other Bill it is dealt with differently, one looks for consistency with the philosophy and the policy decisions taken in that Bill which will not necessarily be transposed into every bit of legislation in which similar issues arise. It is a question of a case by case basis as to what extent and in what circumstances the Government and the House feel that fixed fines are appropriate given the nature of the activity involved that we are trying to prescribe. I take the hon Member's point, there is not a semantically logical answer. It is just a question of containing this fixed business to the legislation in which the fixed fine concept has been introduced.

HON J J BOSSANO:

Mr Chairman, the point is that we feel quite strongly that if in fact it had been established that it is possible, in our view it has not been the practice because incorrect advice was available saying it could not be done. But it would seem to me that since the Government are satisfied that it can be done, the fact that there are fixed penalties in other parts of that legislation I do not think is an argument because presumably the conviction for not providing information will be over and above the conviction for not registering labour and all the rest which will also be subject to other fines. I think it ought to be consistent with the seriousness with which the Government deal with this question of people not carrying more than 1,999 cigarettes per person in a vehicle, that if a Police Officer or a Customs Officers, suspects that a vehicle is carrying in excess of this quantity, then that should be somebody

running away and refusing to cooperate with the Police, it ought to be considered serious enough to make the courts impose a fine at level 5, rather than leaving it at their discretion to impose it. I would have thought that it was less of an argument for mitigation in somebody running away with a vehicle full of cartons of cigarettes not being too help with an officer. Therefore, as far as we are concerned, I wish to propose an amendment that we should substitute for the words "is liable on summary conviction" to "shall on summary conviction be fined at level 5".

HON CHIEF MINISTER:

Mr Chairman, the Government will not support the amendment because this is an issue that can be discussed on a different occasion. The fact is that long and careful thought has been given to the appropriateness of the inclusion of the fixed penalty, of the fixed fine in the previous legislation and I am not willing to extend that principle in the heat of a debate in the House without an equal measure of thought and consideration as to the implications and ramifications. This is an amendment that the Government do not support, not necessarily because we disagree with it but because we would have to give consideration to the issues that might be raised and certainly we are not willing to delay the passage of this Bill whilst we do that. There will be plenty of opportunities in the future not just in relation to this but in relation to other legislation to take the point that this is at least as serious if not more serious than the Employment Bill and therefore we should impose a fixed fine as well. I think that once one starts making it a precedent, once one starts doing it regularly, may raise issues that need to be considered. I have distinctions in my mind of the sort of places in which the fixed fine is appropriate and a fixed fine is not and those differences would need to be thought about, would need to be considered, would need to be established, before the Government were willing to agree to its extension to other cases.

HON J J BOSSANO:

I am in the process of putting the amendment in writing, because I am reacting to the amendments that have been put already. If in fact the answer that I am getting is that they are willing to revisit this particular possibility and not consider it at this stage because they do not want to delay the Bill then I will not press ahead with the amendment but I will expect a reply. That is the reply that I have been given, that it is going to be considered and that I will be getting an answer.

HON CHIEF MINISTER:

The position is that the Government will not agree to the extension of the fixed fine principle into a piece of legislation where we have not had the opportunity to carefully consider its appropriateness and therefore as we are not willing to delay this legislation whilst we consider that, we have to decline to support the amendment without thereby suggesting that the amendment is necessarily opposed. It would be opposed today for lack of time to consider it properly. The general principle raised by the amendment is that there are other offences for which the hon Member believes, if the power is legitimate, ought to be used. I do not necessarily demur from that view. The hon Member will I am sure remember from his days in Government just how frustrating it is to see that the policies sometimes do not succeed because there is not a sufficient deterrent in the penalties attached. The extension of that principle needs to be considered on a case by case basis and not just applied across the board as a rubber stamp and the Government are not willing to support its extension without giving that due consideration. Therefore, by all means the principle as to when and in what circumstances it is appropriate to extend can and will be revisited which is not to say that we are going to come back with an amendment in respect of this Bill after this meeting of the House. It would be up to the hon Members either to raise with us in correspondence or indeed to bring their own amendment at some later date if they wanted to amend the legislation.

HON J J BOSSANO:

In order to do the second we would need to introduce a Private Member's Bill and in order to introduce a Private member's Bill we would need to get the support of the Government and it would not be very logical for the Government to support a Private Member's Bill unless they were willing to do it and if they were willing to do it, it would be more logical for them to do it. That is the answer to the second part. I am quite happy that the initiative should be taken by the Government provided that they give some thought to the usefulness of having it in this particular section, given that they consider it to be useful to have it in order to strengthen the deterrent in the law which makes the job of the Employment Inspectors presumably easier. The whole purpose is that if the employer knows that if he does not cooperate with the Inspector he will be fined £5,000, he is more likely to cooperate and presumably if somebody knows that if he does not stop the car he will be fined £5,000 he is more likely to stop the car. That is the logic. If the Government say

they will take away the arguments we have put and come back and give us an answer yes or no, then we would rather that the matter should be given some thought and not press ahead with the amendment at this stage.

HON CHIEF MINISTER:

Mr Chairman, the next amendment relates to adding a whole new sub-sections (3) and (4) to clause 17(C). Hon Members will see on page 53 that clause 17(C) has a sub-clause (1) and a sub-clause (2) and on page 4 of my letter of amendment they will see the text of additional sub-clauses (3) and (4) that will be added on there. The amendments are adding a new sub-clause (3) to read: "where it is proven by a Police or Customs Officer on oath to a Justice of the Peace that there is reasonable cause to believe (a) that cigarettes may be found at any premises in Gibraltar in circumstances contrary to provisions of this Ordinance; and (b) that admission to the premises has been refused or that a refuser is apprehended and in either case that notice of the intention to apply for a warrant has been given to the occupier; or that an application for admission or the giving of such a notice would defeat the object of the entry, or if the case is one of urgency, or if the premises are unoccupied or the occupier is temporarily absent, the Justice may by warrant under his hand authorise the Police or Custom Officer to enter the premises, if need be by force;" and sub-section (4) would read "any person who wilfully obstructs a Police or Customs Officer acting in pursuance of sub-section 3" that is to say acting in pursuance to a warrant "shall be guilty of an offence and shall be liable on summary conviction to a fine at level 5 on the standard scale".

Mr Chairman, having deleted "the power of entry into premises without warrant" from the previous section, these sub-sections just set out the circumstances in which a Police or Customs Officer may obtain a warrant. In a sense that is consequential to the deletion of the power to enter without warrant and I understand that it is a pretty standard language for the circumstances in which warrants should be issued, can be applied for to the Justice.

Finally, clause 2(11) of the Bill inserts a new clause 17(D) in the principal Ordinance and we would like to amend that newly inserted clause 17(D) so that it reads as set out there in my letter. That would read "Where there are reasonable grounds to suspect that any person, in circumstances contrary to the provisions of this Ordinance, is in possession of any cigarettes, or is importing or exporting any cigarettes,

or is intending to import or export any cigarettes, a Police or Customs Officer may search him and any article he has with him". That is exactly the same point as we discussed in the case of 17(B). It is the phrase "in circumstances contrary to the provisions of this Ordinance" being in the wrong place and thereby causing doubt whether that qualifies the whole list or just the last item of it. There are some consequential language amendments but that is the purpose and objective of that amendment. The only other, apart from transferring those words to a different part, is that it adds the words "any cigarettes" after the word "exporting" in line 3. If hon Members look at line 3 of 17(D)(1) in the Green Paper the words "importing or exporting" there, there will be inserted the words "any cigarettes" and apart from that the only amendment is to change the position of the words "in any circumstances contrary to the provisions of this Ordinance" from where it presently appears to the second line after the word "is", for the same reason as we discussed before, to make it clear that all the circumstances need to be contrary to the provisions of the Ordinance before they are invalidated.

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 EMPLOYMENT REGULATION (OFFENCES) BILL

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

Clause 2

HON J J NETTO:

Mr Chairman, the words "and training" to be removed so that it will remain "The Employment Ordinance" and not "The Employment and Training Ordinance".

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

Clause 3

HON J J BOSSANO:

Mr Chairman, in clause 3, where we have got this compulsory fine of £5,000 on the standard scale, in fact the provision of the compulsory fine in this case, as far as we can tell is certainly not required for consistency with the rest of the Ordinance because here we have a situation where it can actually be imposed on an individual worker. The argument that we had on the general principles was that the fine was going to be on the employers, here we have got it on the worker, because it says at 3(2)(c) it says that if the Inspector has got the right to interview any person he finds in premises whom he believes to be or to have been employed in those premises, if the person delays or obstructs or is uncooperative in any way, it seems to me he then becomes, not the employer, he becomes liable to the compulsory fine of £5,000. We cannot support that. The point that I was making earlier about somebody refusing to cooperate with the Police or the Customs, the contrast with this which is one goes into a premise, one sees somebody there, one suspects, that it is somebody who may have been employed in that place and one starts wanting to question him and the guy feels "who the hell is he to question him because he is in this shop because you suspect he was there employed at some time". So, he is obstructing, he delays the Inspector and he refuses to give him cooperation and then he is charged with being obstructive and if convicted he shall be fined £5,000. The employer who does not inform the ETB is only liable to £2,000. If there was an argument for making this liable to I do not think there is anywhere else in the Ordinance where it is stronger than in this particular instance.

HON CHIEF MINISTER:

Mr Chairman, the hon Member is right. Certainly there is no intention in that section to make the employee liable for that. I think the best way to deal with this is to amend so that instead of reading "a person who" it should read "an employer who". The point that the hon Member is making is that this should not result in the employee being fined £5,000. I am grateful for the hon Member pointing this out because the whole essence of the legislation is that it creates a regime against employers and not against employees. I am grateful to the hon Member for spotting that which we had missed and whether he would prefer that I move the amendment or whether he wishes to move an amendment which we will support to substitute "employer" for "person", I leave it entirely to him.

MR SPEAKER:

If the employer is a company then you cannot question anyone?

HON CHIEF MINISTER:

That is not true, Mr Chairman, I think that companies can obstruct by the acts of their directors and officers, if that proves to be defective we will have to revisit it but I think the point that the hon Member makes in the first place is correct. It could read "a person who is an employer and who". I do not think it adds anything, I think it means exactly the same thing.

HON J J BOSSANO:

I think if one says a person who is an employer then effectively one is not catching the company anyway so I would have thought that if one says "an employer who wilfully delays or obstructs" that would presumably have the intended effect.

HON CHIEF MINISTER:

Yes, and the other thing, Mr Chairman, is that we would have to add "self-employed persons", so that should read "an employer or a self-employed person who" because of course a self-employed person in respect of himself is in the same position as an employer is in respect of an employed person. Mr Chairman the amendment should be, delete the word "person" in the first line of (3), and substitute therefor the words "employer or self-employed person".

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

Clauses 4 and 5 were agreed to and stood part of the Bill.

Clause 6

HON CHIEF MINISTER:

Mr Chairman, I think here we need to move an amendment consequential on the amendment that I indicated at Second Reading we would agree to and that was the lowering of the fine for the failure to register terminations, although we debated that point at Second Reading in the context of the court fine, but I think logically it would also have to be reflected in the figure that a fixed penalty notice can be issued for. Otherwise, as it presently stands one could issue a penalty notice for a much higher sum than the court could eventually fine him for not paying it. Mr Chairman, it presently reads "the fixed penalty for the purposes of section 5 shall be equivalent to three quarters of level 4 on the standard scale per person in respect of whom a notice under that section is served" and then it would have to say something like "except in the case of an offence under Regulation 13 of the Employment Regulations 1994 in which case the fixed penalty notice shall be equivalent to three quarters of level 3 on the standard scale". I think we have got to propose the amendment by deleting the full stop and adding the words "except in the case of an offence under Regulation 13 of the Employment Regulations 1994, in which case the fixed penalty notice shall be equivalent to three quarters of level 3 on the standard scale". I am really indicating the amendment to which I am going to agree later. Level 3 is £500, level 4 is £2,000, so what I am proposing... the intention is to reduce the court fine for non-registration of a termination to £500. Therefore, the fixed penalty is three quarters of that which would be £375.

HON A J ISOLA:

Mr Chairman, in respect of Regulation 13 of the Employment Regulations, Failure to Notify, I cannot recall whether regulation 13 actually had a time period in which one had to file the notice of termination? [HON CHIEF MINISTER: Two weeks.] What will be the position in respect of people that have failed to do so up until this date, in other words, is there any liability in respect of any offence because if it is still a failure to have done it today, even though they should have done it within two weeks, whenever the termination was.

HON CHIEF MINISTER:

Mr Chairman, there is no intention that any of this legislation will operate retrospectively. That would raise the rather imaginative but exciting prospect that the Leader of the Opposition was referring to when he spoke about £3 million; £4 million and £10 million. That would only arise if the 3,000 open vacancies that we know we now went back and clobbered all of those. I think what there is going to be, as I understand it, is that there is going to be a correction. The Bill, I am just being reminded will allow 30 days anyway. It is not the Government's intention administratively to go back and revisit since the current regulations were introduced what employments had not been properly terminated. The intention is that this should start as of now and we will have to find another way of creating an accurate record for day one and those ideas are being worked on. We should leave it as level 3 because we can always revisit until the end of Committee Stage, until we finish. We have still got to do the other amendment which is the one about the court fine. I am advised that level 3 is £500.

Clause 6, as amended, was agreed to and stood part of the Bill.

Clauses 7 to 12 were agreed to and stood part of the Bill.

Schedule 1

HON J J NETTO:

Mr Chairman, substitute for references to the "Social Security (Contributions) Regulations" references to the "Social Insurance (Contributions) Regulations."

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

Schedule 2

HON CHIEF MINISTER:

In section 3, headed "Amendments to Employment legislation" it is subsection (2) of 26 that has the effect of imposing a fine at level 4 for all

the employment-related offences listed in the Schedule. What we have agreed is that we want to make an exception of the offence that relates to notification of termination. The way that I am advised that this needs to be done is that in (2) the words at the beginning have to be insert to read "Subject to sub-regulation (3) and" so in (2) it would start "Subject to sub-regulation (3) and" and then it carries on as it is and then we add a new sub-regulation (3) so we add "(3)" after (2) so this would be "26(3)" and it would read "A person found guilty of an offence contrary to Regulation 13 of the Employment Regulations 1994 shall be sentenced on summary conviction to a fine at level 3 on the standard scale".

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

The Long Title

HON J J NETTO:

Mr Chairman, here again as I said before it should be "The Employment Ordinance" and not the "Employment and Training Ordinance".

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

THE PUBLIC HEALTH ORDINANCE (AMENDMENT) BILL 1999

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

THIRD READING

HON ATTORNEY-GENERAL:

I have the honour to report that The Tobacco Ordinance 1997 (Amendment) Bill 1999, The Employment Regulation (Offences) Bill 1999, and The Public Health Ordinance (Amendment) Bill 1999, 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. Agreed to.

The Bills were read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

Mr Speaker, I have the honour to move that the House do now adjourn sine die. Hon Members will have noticed that we have not taken the Committee Stage or the Third Reading of the Insider Dealing Bill. The reason for that is that both the Minister who is leading on this and, indeed, the Draftsman who has been supporting him, are both away from Gibraltar and I cannot get access to the information to do justice to the hon Members' questions and as I do not believe that this is urgent it can wait until the next meeting. I am assured by the Clerk though that it survives from meeting to meeting. We can pick it up at Committee Stage in the next meeting.

Question put. Agreed to.

The adjournment of the House was taken at 1.25 pm on Monday 26th April 1999.

GIBRALTAR

HOUSE OF ASSEMBLY



HANSARD

19TH MAY, 1999
(Vol. I)

(1st, 2nd and 4th June 1999 - BUDGET)

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Fourteenth Meeting of the First Session of the Eighth House of Assembly held in the House of Assembly Chamber on Wednesday 19th May 1999, 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 Miss M I Montegriffo
The Hon A J Isola
The Hon J J Gabay
The Hon J C Perez
The Hon Dr J J Garcia

IN ATTENDANCE:

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

PRAYER

Mr Speaker recited the prayer.

CONFIRMATION OF MINUTES

The Minutes of the Meeting held on the 25th February 1999, having been circulated to all hon Members, were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

The Hon the Chief Minister laid on the Table the following documents:

1. The Electors (Registration) Rules (Amendment) Rules 1999.
2. The 1995 and 1996 Reports and Accounts of the Gibraltar Development Corporation.

Ordered to lie.

The Hon the Minister for Tourism and Transport laid on the Table the Air Traffic Survey 1998.

Ordered to lie.

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

1. Statement of Consolidated Fund Reallocations approved by the Financial and Development Secretary (Nos. 6 to 8 of 1998/99).
2. Statement of Improvement and Development Fund Reallocations approved by the Financial and Development Secretary (No. 4 of 1998/99).

Ordered to lie.

ANSWERS TO QUESTIONS

The House recessed at 11.45 am.

The House resumed at 11.55 am.

Answers to Questions continued.

The House recessed at 1.00 pm.

The House resumed at 3.05 pm.

Answers to Questions continued.

The House recessed at 5.03 pm.

The House resumed at 5.20 pm.

Answers to Questions continued.

The House recessed at 7.40 pm.

FRIDAY 21ST MAY 1999

The House resumed at 2.35 pm.

Answers to Questions continued.

The House recessed at 4.50 pm.

The House resumed at 5.10 pm.

Answers to Questions continued.

The House recessed at 7.35 pm.

The House resumed at 7.45 pm.

Answers to Questions continued.

The House recessed at 9.37 pm.

The House resumed at 9.50 pm.

Answers to Questions continued.

COMMITTEE STAGE

THE INSIDER DEALING (AMENDMENT) BILL, 1999

HON ATTORNEY-GENERAL:

I have the honour to move that the House should resolve itself into Committee to consider the Insider Dealing (Amendment) Bill 1999, clause by clause.

This was agreed to and the House resolved itself into Committee.

Clauses 1 and 2 and the Long Title

HON J J BOSSANO:

We raised some questions in the general principles of the Bill. We actually, I believe, voted against the original Insider Dealing Ordinance anyway but in addition, I think, on this occasion we asked for the reasons for these amendments and I think, at the time, the Minister was not here and the Chief Minister said he hoped we would be able to get the answers in the Committee Stage.

HON P C MONTEGRIFFO:

Mr Chairman, the amendments are really very straightforward but perhaps I can give a little background as to how they arise. They arise actually from dealings between the Financial Services Commission and another regulator – I do not think I should divulge the identity of the other European regulator – but dealings with another European regulator that has had the need to assess a company wishing to access business to which this Ordinance is relevant. In other words, there is an issue between the Gibraltar regulator and a foreign regulator within the EA where the issue of the transposition of the Insider Dealing Ordinance was discussed. In liaising with that other EA Authority, Mr Chairman, it emerged that two sections of the Ordinance had not been properly transposed. On further investigation it was discovered that indeed there was an argument that could be raised to the effect that the way we had transposed these provisions of the directive were not complete and indeed we had reference to the way this had been done in the United Kingdom. In the United Kingdom the two changes to the subsections are in fact what is contained in their law and the two changes are very simple; to remind hon Members it is essentially the addition of the words “on grounds of legal privilege” in subsection (7) of section 12. In other words, it limits the ability to deny the granting of information only if it is under the umbrella of legal professional privilege, that is the UK provision and it seems just to have been left out of our Bill when we did this. There was no policy consideration that went into the exclusion of

those words when we considered the transposition here. Secondly, and perhaps more importantly and where hon Members might have had eyebrows raised is the power now granted to the Minister to actually dispense with banking confidentiality where the Minister so thinks that in the interests of an investigation under the Insider Dealing Ordinance that is appropriate. That, Mr Chairman, replicates the powers of the Secretary of State for Trade and Industry in the United Kingdom, it therefore was felt appropriate to have the same power here domestically. Obviously the power is a very significant power that would be exercised only in the context of a situation where there were clear criminal proceedings that were being contemplated and where, as a matter of the exercise of public policy consideration, it was felt appropriate for the normal provisions of banking confidentiality to be dispensed with but most importantly it replicates UK provisions and therefore what we are seeking to do here is to leave beyond doubt that we have properly transposed this directive. We are now doing so in a way that in these two measures actually replicates the UK provisions and we have thought of these as completely unobjectionable and indeed beneficial and it will certainly lay to rest the anxieties expressed by one other EA regulator that actually went through this with a fine tooth comb and found these two areas that they believed were not properly transposed in Gibraltar.

HON A J ISOLA:

Mr Chairman, may I just ask, I am not entirely clear what the Minister was saying was that these are provisions that directly emanate from the transposition or they are being used because they know the UK which may or may not be above the minimum standard required by the directive itself. And, if they do in fact derive directly from the directive itself, are there similar provisions on the Ministerial ability to remove that confidentiality provisions, is that a direct EU requirement?

HON P C MONTEGRIFFO:

The position is not that simple or that clear, Mr Chairman. The changes to the Ordinance to be introduced by the Bill are in response to the view, on advice, that paragraph 2 of Article 8 of the directive and paragraph 2(a) of Article 10, those are the relevant Articles in respect of which these provisions are relevant, are not fully transposed other than with these changes but those sub-articles, as Opposition Members will be able to see when they turn their attention to it, does not actually mention legal professional privilege at all nor does it mention Ministerial powers. If I can read it briefly, it simply says, Article 8(2), "competent authorities must be given all supervisory and investigatory powers that are necessary for the exercise of their functions where appropriate in collaboration with other authorities". The UK interprets that to mean that it means there must be made as wide part as possible which means the only thing one can really limit oneself to not giving is things that fall under the heading of the legal professional privilege. The second case, sub-article 10(2), "the competent authorities may refuse to act on a request for information (a) where communication of information might adversely affect the sovereignty, security or public policy of the state addressed". The view taken in the UK is that that provision is properly discharged by allowing wide powers to be exercised in this context and in the UK by reference to Ministerial powers of intervention which allow even banking confidentiality to be set aside in appropriate circumstances. So the answer in a nutshell is the advice received is that it is directive driven but is directive driven not because it explicitly says, "you shall do (a), (b) and (c)" but because it sets certain objectives which the UK has interpreted in the case of the UK are met by these mechanisms which we have been persuaded it is reasonable for us to replicate in our domestic legislation.

HON A J ISOLA:

Mr Chairman, was any thought given at the possibility of, like in many other areas, having a provision whereby the making of the requirement could be authorised by a court of law in application with the same criteria or guidelines that the Minister would use?

HON P C MONTEGRIFFO:

I think, Mr Chairman, the fact that the UK had powers of Ministerial persuaded us that that was the easiest and most appropriate route which to go down. It would mean that Gibraltar was not taking a view that was different, it was something that was not controversial, it is not something where, for example, there is an element of what we call "regulatory arbitrage" where Gibraltar would have a benefit by doing this differently. These are powers that exist in the UK and Gibraltar should be seen to have as strong powers in persuading other EA authorities of our proper transposition of these directives and we thought it entirely sensible that we should follow the UK thinking on these two provisions.

HON A J ISOLA:

Mr Chairman, bearing in mind the sensitivity of that particular point of banking confidentiality and secrecy, are Government aware of any other Ordinances which may have to be amended in a similar way or is it just limited exclusively to the Insider Dealing Ordinance? There is no other regulator somewhere else knocking on another Ordinance saying, "What about this one?"

HON P C MONTEGRIFFO:

I am not aware of any such issue.

HON J J BOSSANO:

Mr Chairman, I can understand that the main consideration is that if there is business to be gained or lost that is what is, but we were not happy with the original Ordinance anyway. The explanation we were given the last time was that if it was possible to engage in an activity which was taking place in a quoted share in the United Kingdom it would be an offence if the person was doing it in the United Kingdom, the fact that he was doing it from Gibraltar could be interpreted as insufficient transposition in the Member State UK of the obligation of the Member State UK because, of course, we are talking here about Insider Dealing in relation to shares quoted in a stock exchange and we do not have a stock exchange in Gibraltar although the original Ordinance makes the provision for the event that we might have one. But it is dealing with somebody living in Gibraltar on the basis that he is committing an offence because he is engaged in using inside information in the dealing of shares in a stock exchange in the United Kingdom. That is unlike any other transposition of any other directive in that in every other directive we are treated as a parallel Member State not as an integral part of the Member State UK. I think that was breaking new ground and it was breaking new ground in that the Minister was appointing the competent authority for the implementation of the Ordinance and we are now going one step further in that the Minister, simply because it is the Secretary of State in the United Kingdom is the one that can decide that banking secrecy is overruled because it is considered it is necessary. Well, all I can say is that when we have had legislation in the past in this House I would remind the Government of the argument that they sometimes used when they said, "What is important is what we are putting in the law not the common-sense with which the law will be applied because tomorrow there could be a lunatic sitting in the Government benches". That is what they used to say when they were in Opposition, I do not know whether they have come to the conclusion that today there is a lunatic sitting in the Government benches and that therefore it does not matter anymore. That used to be the nature of the argument.

HON CHIEF MINISTER:

Is the hon Member saying that even when in other countries in Europe powers are held by Ministers that notwithstanding his sort of constitutional boldness he does not think that the same powers ought to be exercised by Ministers in the case of Gibraltar? Is that his position?

HON J J BOSSANO:

No, that is not my position nor is my position that the constitutional relationship should not be changed piecemeal without proper check and balances, which used to be his position. *[HON CHIEF MINISTER: That is still my position.]* That is still his position. But I suppose the check and balances is that he checks us and we balance him, is that the idea?

HON CHIEF MINISTER:

No, he checks and balances us. Checks and balances does not mean that Ministers do not do things.

HON J J BOSSANO:

No, it does not mean that. It simply means that they screw things up, that is all it is.

HON CHIEF MINISTER:

Subject to scrutiny. *[HON J J BOSSANO: Subject to scrutiny.]* That is what democracy is, is it not?

HON J J BOSSANO:

Of course, democracy is that one scrutinises and then when one does not get an answer one lumps it. No, if the Chief Minister wants to know how I feel about it, I think that while I can understand the practical desirability of not doing things which hold up potential business and I can see the compelling reason in that

area, anything that generates new business for Gibraltar and jobs is welcome, I really think that we raised issues of principle in legislation which do things for the first time – I know that when I raised that argument in the general principles of the Bill the Chief Minister argued that it was not raising new issues. *[HON CHIEF MINISTER: What is the new principle?]* Well, I think there are two new principles, one in the original Bill was the fact that on this occasion and on no other occasion instead of the legislation being transposed in Gibraltar as every other piece of Community law has been, in deeming Gibraltar to be a separate Member State, we are integrated with the United Kingdom on the basis that it is an offence.....

HON CHIEF MINISTER:

I see, that part. I thought the hon Member was assessing that the new principle was that the powers had been transferred to Ministers which is hardly new since we learned the trick from the Opposition Member.

HON J J BOSSANO:

No, the powers are not being transferred from the Governor to the Minister because it is not a power the Governor has in the first place. What we are being told is that we have legislation originally which says that if one wants to go to a bank and get information about somebody having been involved in using privileged information to sell shares in the London Stock Exchange, one needs the agreement of the banker to do it and now we are being told that if the banker does not agree to do it, the Minister can tell the banker, "You will do it". I suppose it is conceivable that there could be a Minister who if he is stepped on by the Treasury will go and step on the Bank Manager, that is not prohibited by this Ordinance. We are giving power to the Minister but we are giving power to the Minister for presumably, in the case of the Secretary of State the only guy who will step on the Secretary of State is Tony Blair and as we know from bitter experience in Gibraltar the only one that does not step on the Government of Gibraltar in the Foreign Office is probably the charwoman but barring that

everybody else can do it. As far as we are concerned, Mr Chairman, the arguments have not been sufficiently compelling to make us support the Bill.

Question put. The House voted.

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

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

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

The Third Reading to be taken at a subsequent meeting of the House.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Tuesday 1st June 1999, at 2.30 pm.

Question put. Agreed to.

HON CHIEF MINISTER:

May I just indicate to Opposition Members that we will be taking the Budget debate at that sitting.

The adjournment of the House was taken at 1.40 am on Saturday 22nd May 1999.

TUESDAY 1ST JUNE, 1999

The House resumed at 2.45 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 R Rhoda – Attorney-General
The Hon T J Bristow – Financial and Development Secretary

OPPOSITION:

The Hon J J Bossano – Leader of the Opposition
The Hon J L Baldachino
The Hon Miss M I Montegriffo
The Hon A J Isola
The Hon J J Gabay
The Hon J C Perez
The Hon Dr J J Garcia

ABSENT:

The Hon K Azopardi – Minister for the Environment and Health

IN ATTENDANCE:

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

DOCUMENTS LAID

The Hon the Chief Minister moved under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the laying of various accounts on the Table.

Question put. Agreed to.

The Hon the Chief Minister laid on the Table the following accounts:-

- (1) GRP Investment (Holdings) Ltd – 1995/96.
- (2) GRP Investments Co Ltd – 1995/96.
- (3) Gibraltar Commercial Property Co Ltd- 1995/96.
- (4) Gibraltar Community Projects – 1996 to 1998.
- (5) Gibraltar Land (Holdings) Ltd – 1995/96.

- (6) Gibraltar Joinery & Building Services Ltd – 1996 and 1997.
- (7) Westside One Co-ownership Co Ltd – 1995/96.
- (8) Westside Two Co-ownership Co Ltd – 1995/96.
- (9) Brympton Co-ownership Co Ltd – 1995/96.

Ordered to lie.

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

- (1) The Report and Audited Accounts of the Gibraltar Broadcasting Corporation for the year ended 31st March 1996.
- (2) Statements of Consolidated Fund Reallocations approved by the Financial and Development Secretary (Nos. 9 and 10 of 1998/99).

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE APPROPRIATION (1999-2000) ORDINANCE 1999

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

Question put. Agreed to.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to move that a Bill for an Ordinance to appropriate sums of money to the service of the year ending with the 31st day of March 2000, be read a first time.

Question put. Agreed to.

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

Mr Speaker, I will be confining my contribution at the Second Reading to an outline of the context of the Appropriation Bill. I will then give way to the Chief Minister to present the Government's budget.

This year the Appropriation Bill is in four parts. First, the House is being asked to appropriate £100,229,000 for departmental expenditure as set out in Part I of the Schedule to the Bill. A further £20,568,000 of Consolidated Fund charges, not requiring a vote of the House, brings the total Consolidated Fund expenditure for 1999/2000 to £120,797,000. Hon Members will see from the Government's estimates that the Consolidated Fund revenue for the year is projected at £133,169,000.

The second part of the Bill concerns the appropriation of £10.1 million being sought from the Consolidated Fund reserve. This is primarily to finance improvements and developments and expenditure.

Part three of the Bill seeks the appropriation of £24,944,000 to the Improvement and Development Fund. The various categories of capital and economic projects are set out in Part III of the Schedule to the Bill. The sources of finance include the £10 million to be appropriated from the Consolidated Fund Reserve to

which I referred earlier - £10 million of borrowing, with the remainder coming from the sale of Government properties, EU grants and various miscellaneous funds.

Mr Speaker, this year there is an additional fourth part to the Bill concerning the Contingencies Fund. This is the fund established under the Constitution for urgent and unforeseen expenditure. Hon Members may recall that when the public finances were restructured in 1997, the Government closed most of the Special Funds. One of those funds closed was the Government's Insurance Fund which had £1 million balance at that time which was then transferred to the Contingencies Fund with the authority of this House. I explained to hon Members during last year's Estimates debate that the Government were putting in place new comprehensive insurance arrangements. This has now been done and the need to retain a Contingencies Fund of £1.4 million is no longer considered necessary. The House is therefore being asked to reduce the Contingencies Fund by £1 million and return it to its former level of £400,000.

Finally, I have circulated to hon Members some replacement pages to the Estimates.

HON J C PEREZ:

Would the Financial and Development Secretary give way? I am afraid that he faxed me a copy of that on Friday but other Opposition Members have not yet received what was supposed to have left his office last Tuesday. I am sorry, they have come in today.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I certainly have my copy with the amendments here. None of the changes in the represented pages have any impact on the appropriation being sought in the Bill. There are one or two additional editorial type of amendments to which I will draw attention at the Committee Stage and that is to the Book of

Estimates. Mr Speaker, I give way to the Chief Minister and in so doing I commend the Appropriation Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON CHIEF MINISTER:

Thank you, Mr Speaker. I do not know how copious the Chancellor of the Exchequer's notes are when he delivers his budget speech to the House of Commons and I have no intention of comparing mine with his but still, I think Mr Speaker will understand that in addresses of this nature it is important to be correct as to detail and therefore my reference to my notes may be more copious than they would normally be in non-budget addresses.

Mr Speaker, the two greatest impediments to economic management and planning are the poor range and quality of statistics available to the Government and the lack of a recent model of the Gibraltar economy, that is, a recent Input/Output Study. This not only impedes economic policy transparency in terms of the information that Government can provide to this House, to employers and to trade unions – it also prevents the construction of credible national accounts and conventional economic growth and performance statistics.

There have been two previous input/output studies into the economy of Gibraltar, the first in around 1981 and the second in 1987. These studies looked at the economy in the context of specific and major extraneous events happening at that time; in the case of the earlier 1981 study it was the anticipated closure of the naval dockyard and in the case of the 1987 study it was the impact of the opening of the border with Spain. Since then, the structure of Gibraltar's economy has changed significantly having adjusted to the effects of further, substantial defence cuts, the considerable growth in home ownership and the diversification flowing from the development and expansion in financial services, tourism and port activities, including the post-GSL contraction in shiprepairing activities. The economy has therefore not only

undergone continuous major change but has also been increasingly exposed to market forces such as fluctuations in interest rates (which remain high in real terms) and the relative strength of sterling, notably against the peseta. It is also increasingly exposed to the impact of, what I might call, external institutional pressures or changes which increasingly interfere with the way that our domestic economy works. These include EU measures and legislation dealing with issues as diverse as the environment, health and safety, workers' rights, and tax harmonisation agendas.

In such a situation it is all the more important in order to determine optimum economic policies, to be able to analyse each sector of the economy and the way in which they interact with each other. The Government have therefore commissioned economic consultants to undertake a further input/output study of the Gibraltar economy. The purpose of the proposed study is to provide a detailed model that will simulate the behaviour of the Gibraltar economy in response to a wide range of influences. It will enable Government to analyse, plan and measure the economy, the effectiveness of medium and long-term strategies and policies and to predict the likely income of changing circumstances and conditions.

The Input/Output Study which will take around a year or so to complete, will form an important quantitative basis for that strategy. The study will measure the economic significance and the impact of change in each of Gibraltar's sectors of final demand, that is, the direct and indirect changes in the level of activity relating to sectors such as financial services, tourism, port activities and the Ministry of Defence. The model will, however, be refined to produce a micro-economic assessment of the nature of the different activities within each sector. In the tourism sector, for example, it will be possible to measure the relative income, employment and fiscal benefits within the visitor mix to Gibraltar. Similar analyses will be made for changes in final demand to the different types of activities in the finance sector or the different forms of port activity from bunkering to shiprepair and marina activity.

The consultants have already expressed serious concern about the poor state of economic statistics availability in Gibraltar from the point of view of both Government and private business activities. The consultants, who are the same ones who did the 1981 and 1987 studies, have observed that fewer reliable statistics are available compared to the situations in 1978 and 1988 which they attribute mainly to the rundown of the resources of the Statistics Office since 1988.

As the House knows, I have myself lamented the deficiencies in the statistical database on a number of occasions. Government are determined to correct these at the earliest opportunity. The consultants have been requested to include this in their study. A number of limited steps have already been taken by Government to improve the situation. The computerised processing of trade statistics is being reviewed and reprogrammed. The compilation of Employment Survey statistics has reverted to its original employer questionnaire format. The Tourist Survey is to be revised in terms of its sampling frame and coverage. Fortunately, we have the results of the Family Expenditure Survey published last year which provide reliable estimates of consumer demand and serve, in conjunction with other data, as control totals to check on turnover levels and leakages within the domestic economy. This is an important part of the construction of the Input/Output tables. There remains, however, further detailed work to be done. With the help of the Input/Output team, the Government hope to equip Gibraltar with quality, reliable economic statistics that are so necessary for sound economic analysis and long-term economic management.

Mr Speaker, the essential elements of the Government's economic plan, as set out in our 1996 election manifesto were:- To establish more, better structured and supervised training and apprenticeship opportunities. To establish business start-up schemes and to nurture existing small businesses. To focus on and promote tourism, financial services and the port. To attract new businesses to Gibraltar and obviously to create additional levels of employment.

Although there is still much to be done, we are proud of the progress to date in all of these areas. When we arrived in office in May 1996 there was either no, or very poorly focused, Government infrastructure in respect of the financial services centre, tourism, training and employment. Today we have a structured and well-resourced finance centre division within the Ministry of Trade and Industry led by a Finance Centre Director; we have a structured and managed tourism capability in the form of a Tourism Ministry and a Tourist Board with its own dedicated management and a new Training Unit and training infrastructure within the Ministry of Education and Training led by a Training Officer. Government will continue to concentrate on training initiatives as the essential means of equipping our people to be able to do the jobs that the economy is, and will continue, to generate in the coming years. There has been reform too in the Employment Service in respect of which my Colleague, the Minister for Employment, Jaime Netto, will be announcing important imminent developments during his own contribution to this debate. My ministerial Colleagues with responsibility in these areas will report to the House on the achievements of these new organisations, during their own contributions to this debate. All this has enabled the Government to be more proactive in these areas and to improve the development and implementation of policy and support to the economy. I would like to pay tribute to my Ministerial Colleagues and to the staff of those departments for these achievements in a relatively short period of time.

The private sector of our economy comprises several sectors and although each faces different opportunities and challenges, overall the state of the private sector economy is good as reflected in all the reliable economic indicators available to the Government. For example, Employment levels. In January 1998 the level of Gibraltarian unemployment stood at 599. In January 1999 it stood at 402. In March 1999 it stood at 388. This represents a fall in unemployment from January 1998 to March 1999 of 35 per cent. The Opposition Members may be nervous about the statistics but there is a difference between laughing at a value judgement that I might make and laughing at raw statistics

which are produced on a monthly basis. It is most encouraging to see the considerable number of jobs being created in new ventures. The satellite projects are beginning to recruit. The new Victor Chandler offshore gaming operation now employs 244 people. The new Check-out Supermarket currently employs 83 people. Cammell Laird's ship repair operation now employs 171 people.

Another indicator of the state of the private sector is Government revenue. Government revenue from PAYE and Company tax continues to rise, despite the substantial cuts in personal tax that we have introduced during the last three years. Personal income tax revenue has increased from £41.4 million in 1995/96 to a forecast £47 million in 1998/99. Import duties have risen from £20 million to £25 million, although exact comparability is distorted by the effects of the increased duty on petroleum and tobacco and other changes introduced in the import duty review.

Another indicator is international telephone traffic. One useful barometer of economic activity is the volume of international telecommunication traffic. This has grown by 4.5 million minutes or 26 per cent between April 1996 and March 1999.

And so, Mr Speaker, a brief word on each of the sectors which will be covered in more detail by the Ministers responsible for them.

The finance centre appears, by all indicators, to be busy with levels of activity either holding up in some sectors or rising in others. This is reflected in rising employment levels in the industry revealed in a finance centre survey and, for example, in the rising number of companies formed in Gibraltar. Three thousand nine hundred and seventy-two companies were formed in 1998/99. This is the highest number in any year since 1991/92. In the year to March 1996 the figure stood at 2919. The figure for the year ended March 1999 therefore represents a 36 per cent improvement over the year to March 1996. Government direct revenue from that source has doubled from £600,000 to nearly £1.2 million over the same period. The finance centre is now repositioned as a well regulated centre of international repute.

That was one of our key policy objectives in arriving in office. The industry nevertheless faces several challenges in the years ahead, from which I have no doubt that it will emerge in good, albeit modified shape. These challenges include the European Union 4th and 7th Company Law Directives, the proposed directive for a withholding tax on savings, the European Union Tax Code, the OECD initiative to combat so-called harmful tax measures and the EU Commission's intention to apply state aid rules to tax incentives. My hon Colleague, Peter Montegriffo, the Minister for Trade and Industry and with responsibility for financial services, will give a situation report in relation to these issues during his contribution to this debate. However Government are actively and intensively engaged in these issues, both at a technical and a political level. The Government will take such steps as are necessary to protect, as far as conceivably possible, Gibraltar's interests in these areas. We will continue with our policy of structured and systematic marketing and promotion of the finance centre and also with new product development, both of these in conjunction with the experts in the finance centre.

Work continues to reposition our tax system and finance centre products as necessary to comply with unavoidable international legal obligations and irresistible international trends. The policy will remain to open new opportunities for the finance centre, whilst protecting and preserving to the greatest possible extent, the historical, existing business of our centre.

Tourism continues to respond positively to the range of focused Government policies in this sector and to the intense and tireless energy and work of the Minister for Tourism, Joe Holliday. The hotel refurbishment programme is almost complete and will, as envisaged by the Government, provide a sound basis for further growth in the sector. The statistics are most encouraging, showing year on year rises in persons entering Gibraltar in private motor vehicles, coaches and coach passengers and pedestrians entering Gibraltar; yachts calling; tourist arrivals by air and staying in Gibraltar, and hotel occupancy. Cruise liner calls rose this last year spectacularly.

The Government will continue our programme of street embellishment to enhance not only the living environment of residents, but also the quality of our tourism product and experience. Casemates represents a significant contribution to this process, as well as to local economic and commercial activity. Government envisage doing the same at John Mackintosh Square with the demolition of the elevated Piazza. It remains a policy priority to increase air services to Gibraltar. The new coach and ferry terminals will also represent major enhancements to the tourism infrastructure.

The Port continues to see growth in bunkering, cruise ship calls and ship repairing activities. This year will also see major investment and organisational and management restructure in the Port, with a view to making port management more responsive to commercial considerations whilst, at the same time, maintaining current high standards of maritime control.

Within the general commercial sector, external factors beyond Government's control are creating difficulties within certain business activities. The persistently strong pound is adversely affecting the retail trade (and therefore the wholesale and distributive trades) as Gibraltar prices become less attractive to visiting shoppers and prices in Spain become commensurately more attractive to Gibraltarian shoppers. The recent and continuing difficulties at the border benefits some local businesses but adversely affects others.

The private sector is an important source of local employment which must be nurtured and helped when it needs it. During the last two years the Government introduced Gibraltar's first ever package of measures aimed at helping the private sector. This took the form of rates reduction, Government commercial rents reductions and reductions in various import duties. Recently we introduced the new Employment Ordinance to address illegal labour and thus create a level and fair playing field for all businesses. Special rules will be introduced in this respect to help businesses that rely on casual labour.

I can now announce the following package of additional measures to help businesses, especially small businesses, by reducing overall business costs. Company tax is, in effect, a major business cost. It seems right to the Government that, in order to encourage small companies to maintain jobs, and where possible, increase jobs, that some allowance be made to small companies in respect of the rate of tax that they pay. Accordingly with effect from the tax year 1999/2000, which begins on the 1st July 1999, small companies will pay a reduced rate of company tax at 20 per cent instead of the current 35 per cent. A small company is one which makes a profit of less than £35,000 in a year. There will also be a system of marginal relief for companies making a profit between a lower limit of £35,000 and an upper limit of £105,000 on the basis of a marginal relief fraction of 3/40. This tax rate reduction is worth up to £5,250 to a small company earning profits of up to £35,000. It will apply only to companies trading in commercial activities. These will be defined as trading companies who earn less than 20 per cent of their revenue from property or investment income. Most European countries have a small company tax rate and Gibraltar now has one as well.

Mr Speaker, property costs represent one of the biggest burdens on small businesses. The Government have already delivered some help in the form of rent reductions in Government-owned properties and a 20 per cent rates discount. Government will further assist small businesses in sectors currently adversely affected by the strong pound or otherwise in need of help. Accordingly, the rates poundage on commercial properties, which is currently 62p in the £1, will be reduced from 1st July 1999, by 5p to 57p, a further reduction of 8 per cent. When added to the existing 20 per cent reduction announced last year to those who pay on time, which will now apply to the new poundage, the overall effective reduction in rates to date amounts to 16.4p out of a total poundage of 62p or 26.45 per cent. Unlike the 20 per cent which (subject to prompt payment) was a reduction for all businesses, this additional reduction is restricted to those sectors affected by the strong pound and others in need of assistance. Poundage reduction will therefore apply at this stage only to premises used for the following activities: (1) Retail in Goods; (2)

Wholesale in Goods; (3) Construction, manufacturing and repair (except premises used in connection with the production, distribution and sale of electricity, water and telecommunication services). (4) Transport and distribution.

The Government wish to facilitate investment in new plant and equipment by small companies. At present capital investment is allowable for tax purposes mainly at the rate of 25 per cent per annum on a reducing balance basis. This discourages investment. Accordingly, with effect from 1st July 1999, the cost of capital investments in plant, machinery and commercial vehicles limited to an aggregate value in one year of £30,000 may be offset in full against profit in the year in which the expenditure is incurred. Investment in excess of £30,000 in aggregate will be allowed at the current rate but on a straight line (rather than a reducing balance) basis. This accelerates substantially the period of time over which the cost can be offset against earned profits.

Hon Members will recall that last year the Government halved import duty on motor vehicles provided that they were imported by established local traders and we did this as a means of improving the competitiveness of local traders in face of uncompetitiveness introduced by a rising and strong pound. In the view of the Government and indeed of the judgement of the motor vehicle trade, this has worked well and Government will now extend that principle to the following goods on which duty is, with effect from today, reduced to 6 per cent from 12 per cent but only for trade imports, that is, commercial imports by locally established wholesalers or retailers. The goods affected are furniture and furnishings; domestic appliances, commonly known as white goods; and motorcycles of less than 50cc engine capacity.

Companies contribute to the Insolvency Fund at the rate of £26 per employee per annum. Given that the Insolvency Fund is currently over-funded, contributions will be reduced as from 1st July 1999 by 30 per cent to £18.20 per employee per annum. Those companies that have already paid the current year in advance at the old rate will receive a refund as soon as administratively possible. Furthermore in order to reduce the

administrative burden to companies of computing and paying this levy, as of 1st January 2000 it will be added to and therefore collected through the social insurance contribution stamp.

Mr Speaker, whilst on the subject of social insurance contributions, whereas between 1989 and 1995 social insurance contributions increased every year by about 10 per cent, but since 1996 have been increased only once, notwithstanding that, I can say now that there will be no increase in Social Insurance Contributions in January 2000. The stamp, however, will be increased to include the amount of reduced Insolvency Fund contribution as I have just announced.

When the EU directive on maternity pay was implemented in Gibraltar in January 1996 by the previous administration, the maternity leave pay entitlement in the statutory minimum amount was made payable by the employer. This represents a heavy burden on business, especially small businesses. In every other European Community country maternity leave payments are made by the Government as part of the social security system, in all countries they are funded by the Government, in some countries, the United Kingdom for example, they are physically paid out by the employer on the basis of a reimbursement by the Government but that is a matter of mechanics. The statutory minimum is paid out of Government social security funds. Accordingly, as of 1st July 1999 maternity pay in the current statutory minimum amount will be paid by the Government through the Department of Social Security. Furthermore, social insurance contributions will not be payable during the 14 weeks of maternity leave absence. This represents a saving of £80 per week per employee on maternity leave, which over the 14 week entitlement period amounts to £1120. Government are considering and will shortly make an announcement about the introduction of a qualifying period for entitlement to maternity pay.

I turn now to public finances. Government revenues remain healthy and robust. Revenue for the financial year just ended, 1998/99, are forecast to turn out at £130.6 million. In 1996/97 Government revenue stood at £119 million. The increase in

revenue is due mainly to rising yields from PAYE and Company Tax, and import duty – both of which reflect increased economic activity, and also improvements in arrears collection. Expenditure meanwhile has risen from £106 million in 1996/97 to £114 million forecast outturn for the year ended March 1999. In 1997/98 it was £104 million. Excluding Consolidated Fund Charges of £19.6 million on a forecast outturn basis for last year, departmental expenditure is forecast to turn out at £94.4 million in 1998/99 against £86.3 million in 1997/98. This represents an apparent increase of £8.1 million. That apparent increase of £8.1 million in 1998/99 over 1997/98 is accounted for principally by the payment of moneys from the Consolidated Fund to the Social Assistance Fund amounting to £5.7 million which previously used to come from import duty receipts via the Gibraltar Investment Fund. This is therefore not an increase in expenditure at all. The other two items which account for the £8.1 million is the payment in 1998/99 of two years pay settlement for 1997 and 1998 and also the additional cost of the Millbury contract in respect of the management and staffing of the new Social Services Agency.

The result of buoyant revenue and a tight control on recurrent public expenditure has resulted in a recurrent budget surplus in 1998/99 of £16.63 million, equivalent to 14.5 per cent of total expenditure and 12.7 per cent of total revenue. Expenditure in the Improvement and Development Fund is forecast to have reached £16.84 million last financial year. About £13 million of that was funded out of the Consolidated Fund, or put another way, the recurrent budget which had, as I say, a surplus of £16.63 million.

The £16.84 million spent on capital projects in the Improvement and Development Fund was spent on Government's on-going infrastructure improvement programme principally as follows:- £3.25 million on housing projects; £1.31 million on schools, youth and cultural facilities; £3.1 million on tourism, roads and the port; £6.3 million on general capital works, including beautification works, rockfall safety works, Government computerisation and works on Government buildings and capital works at the Gibraltar Health Authority, and £2.5 million on capital investment related to trade and industry.

Mr Speaker, despite our tax cuts and the current high level of investment in publicly funded capital projects, the Government have been able to increase Consolidated Fund reserves during the year to 31st March 1999 by nearly £3 million. Consolidated Fund reserves stood at £40.34 million at the end of the last financial year, compared to £37.4 million at the end of the last but one financial year, that is a year on year increase in the level of reserves of 8 per cent.

When remaining cash balances held in Government-owned companies are taken into account, overall Government reserves have grown from £41.3 million in April 1996 to £48.8 million in April 1999. Public debt, meanwhile has remained static at £61.4 million during the last three years – we inherited a public debt of £65.7 million which we have reduced by £4.3 million as at 31st March 1999. All of this puts to the sword the absurd statements that one still hears in certain politically die-hard quarters, that this Government are simply spending the money left in the kitty by the previous administration. The reality is that we have paid for our capital expenditure programme out of budgetary surpluses generated during our term of office. We have increased the size of the kitty, or the reserves; we have reduced public debt and to boot we have so far, without including the measures that I will announce later today, returned £12 million of Government revenue in tax cuts to the people of Gibraltar. We are therefore proud of the combination of prudence and fairness to the taxpayers of our stewardship of public finances.

Turning now to the current financial year, the subject matter of the Appropriation Bill under discussion. On the recurrent expenditure side, the departmental expenditure is estimated to rise by £5.9 million, or 6.2 per cent this year over last year. This is mainly accounted for by the following major items: A provision of £2.5 million for supplementary expenditure, which includes £1 million for pay settlements; A £300,000 rise in the cost of educational scholarships; A £200,000 rise in environmental expenditure; A £300,000 rise in the Government's contribution to the Gibraltar Health Authority; A £300,000 increase in industrial wages; A £1.1

million increase in contribution to the Social Assistance Fund by the Consolidated Fund; A £200,000 provision for roads and sewers maintenance; and a £1 million increase for minor departmental expenditure. Total recurrent expenditure including both Consolidated Fund charges and departmental expenditure, is estimated at just under £120 million, up from £114 million.

Consolidated Fund revenue is being estimated to come in at the end of the current financial year at £133 million, compared to £130 million forecasted outturn in the last financial year now ended. The recurrent budget surplus estimated for the current financial year is therefore £13 million. The falling budget surplus reflects the cost to Government of tax cuts, business assistance measures, and other measures to increase support to the community.

This year's Improvement and Development Fund expenditure on publicly funded capital projects is estimated at £25 million. Last year we were able to spend only £16.8 million. The difference this year is that several major projects are under way at the start of the year and expenditure related to them, which now begins to kick in, in a significant manner, when added to expenditure on projects initiated during the year is likely to mean that we will be able to spend more this year than last year. But, of course, it is entirely possible that we shall not be able to spend the whole of the £25 million projected in the Bill. Any Improvement and Development Fund expenditure during the current year over £15 million may be financed from an increase in public debt of up to £10 million. Such expenditure, that is to say, expenditure in the Improvement and Development Fund in excess of £15 million, can be funded either from the Government's budgetary surplus and reserves; or alternatively from debt. If its done from debt, it is axiomatic that the reserves will be preserved. If it is done from reserves, they will obviously fall, but debt will be maintained at current levels.

The summary of the estimated financial position for the current year 1999/2000 which is set out at page 4 in the Estimates booklet is struck on the basis that any Improvement and

Development Fund expenditure this year in excess of £15 million will be financed from a £9 million increase in public debt. If it happens in this way, public debt may have risen in March 2000 from £61.4 million to £70.5 million. But Government reserves will also have risen from £40.3 million to £43.6 million on the basis of estimated revenue and expenditure. Whether or not and to what extent it materialises, depends on variables such as the size of the revenue surplus generated during the current year and the actual level of Improvement and Development Fund expenditure that we are able to incur during the year, both of which will become clearer as the financial year progresses. As the position becomes clearer, Mr Speaker, Government will decide whether to fund the last bit of Improvement and Development Fund expenditure from debt or reserves. Obviously, if we decide to fund that from Consolidated Fund reserves we shall need to come back to the House with a Supplementary Appropriation Bill.

Improvement and Development Fund Expenditure this year is spread across a broad range of economic and social programmes. These include:- £4.1 million on housing projects, including housing estate refurbishment; £1.3 million in school improvements; £5.9 million of Tourism, Port investment and roads refurbishment; £10 million of general capital works, including rock safety works amounting to £1.9 million and most of that relates to the rockfall in the Camp Bay area, beautification works amounting to £2.3 million and also new sports and leisure facilities; also included in the bid this year is £2.5 million of Trade and Industry projects, including two new industrial parks.

So, Mr Speaker, I move to the area of personal taxation. In recent months we have heard some extraordinary statements from some Opposition Members. The Hon Mr Baldachino has said, "the rich are getting richer, and the poor are getting poorer". The Leader of the Opposition, in his May Day message this year desperately rummaging around for his lost working class champion's spurs said, "The clock is being put back, and it is up to us, the Socialists in Gibraltar, to change the direction in which our society is moving". This would be amusing if the cynicism were not quite so great. Let us examine who put the clock back and who is moving

it forward. Let us examine the direction in which society is now moving, and whether the workers that the Leader of the Opposition has tried to convince are now worse off, are likely to want to change its direction. In this examination I set aside all issues of fairness in the recruitment process or of the enormous improvement in terms and conditions of employment now enjoyed by hundreds of workers in Government linked companies like JBS and Gibraltar Community Projects (ex SOS) and Calpe Cleaners. I limit myself entirely to matters of pay, and specifically to matters of take home pay. The Leader of the Opposition spoke in his May Day address of how quickly achievements of the past could be reversed. The stark reality of the matter is that no Government have done worse for the interests of workers and the low paid than the Opposition Members were when they were in office. The only thing that we have reversed in this area, is the tax increases, systematically, year in year out, imposed by the Leader of the Opposition on already over-taxed and low paid workers. Social Insurance contributions is a regressive tax because it is charged at a fixed flat rate regardless of wage level. This means that, in effect, the lowest paid are most heavily burdened by it. For example, £21 per week for someone earning £200 a week is a much heavier burden than for somebody earning £400 a week. One would expect somebody who writes a May Day message resurrecting ideas about the defence of the interests of the working class and about alleged disparity in income levels to have done something positive in eight years of office about this regressive tax which, above all others, strikes at the interest of the low paid. Alas, instead the GSLP administration raised workers' social insurance contributions by 10 per cent, much more than the prevailing rate of inflation, in each year that they were in office, except the last, obviously for electoral reasons.

This Government on the other hand, the one that the Leader of the Opposition says are taking society in the wrong direction and moving the clock of working class interests back, have introduced only one rise in Social Insurance contributions and, as I said earlier, no rise will take place next year either.

I can also announce that the Government are considering options for the introduction of a new system for the levying of social insurance contributions whereby the level of social insurance contributions are linked to how much a worker earns. This means that the lower paid will pay less than higher earners.

Similarly, for eight years the Opposition Members, when in Government, failed to increase tax allowances or income tax bands to keep up with inflation. This had the practical effect of increasing the tax paid by workers as a share of their wages every year between 1988 and 1996. The effect of these failures were that the net disposable incomes, that is to say, take home pay, of workers fell every year from 1988 to 1996. What is more, the fall was greatest for the lowest paid, precisely because of the Social Insurance contribution increases which hits the lowest paid hardest. Therefore, during the years 1988 to 1996 workers on incomes of £5,000 per annum lost 10 per cent; workers on incomes of £10,000 suffered a reduction in net disposable income of 5.4 per cent; those on £15,000 lost 3.8 per cent; those on £20,000 lost 2.9 per cent, and those on £25,000 lost 2.4 per cent. Therefore, given that the poorest lost most and the richest lost least, the reality is that it was under the GSLP Government that the rich got richer and the poor got poorer. The position is even worse when price inflation of nearly 40 per cent over that period is taken into account. People were substantially worse off every one of the years that the Opposition Members who wrote their May Day message a month ago were in office.

In contrast, under this Government, and as a result of our policy of not having annual increases in social insurance contributions, and as a result of having increased personal tax allowances each year to restore their value to 1988 real values, net take home pay has risen every year in 1996, 1997 and 1998 and will do so again in 1999. Workers can of course feel, see and assess these things for themselves but even a cursory glance at the figures serves to demonstrate that workers are unlikely to feel that their interests require a change of direction. Indeed their pay packets have benefited considerably from the change of direction that occurred in May 1996.

We have, of course, already complied with our main manifesto commitment in the field of taxation. We said that we would increase personal allowances to restore and maintain them at 1988 real values. We said that to do this we would raise a single person's tax allowance from £1450 to £2015. It has been £2050 since last year. We said that we would raise a married couple's allowance from £2800 to £3892. It has been £4000 since last year. We said that we would raise elderly persons married allowance from £450 to £625. It has been £630 since last year. The single elderly persons allowance has also risen from £320 to £440.

We promised to abolish estate duty between spouses. We have abolished it altogether.

In our 1996 election manifesto we said that in the longer term, the next stage of income tax reform, should be a review of tax bands to bring about a reduction in the burden of taxation on the lower paid PAYE employees.

We are delighted to be able to make an early start on that today. Under the present income tax thresholds taxpayers pay 20 per cent on their first £1500 of taxable income and 30 per cent on the next £5500. This means that on the first £7000 of taxable income, tax is payable in the amount of £1950. With effect from the tax year commencing 1st July 1999, tax will be payable at 20 per cent on the first £3000 of taxable income and at 30 per cent on the next £4000. This will mean that on the first £7000 of taxable income, tax payable will amount to £1800, a reduction across the board of £150 per annum. In addition to that, the following personal allowances are also increased:-

Personal allowance	by £75 from	£2050	to	£2125
Wife allowance	by £75 from	£1950	to	£2025
Old age (Single)	by £25 from	£440	to	£465
Old age (Married)	by £35 from	£630	to	£665
Child	by £75 from	£650	to	£725
1 st child studying abroad	by £110	from	£700	to £810
2 nd child studying abroad	by £50 from	£600	to	£650

1st handicapped child by £60 from £1100 to £1160
 2nd handicapped child by £65 from £950 to £1015
 1st handicapped child abroad by £135 from £1200 to £1335
 2nd handicapped child abroad by £60 from £1100 to £1160
 Blind person's allowance (which has not been raised since 1987) by £115 from £250 to £365
 Private Nursery fee allowance by £20 from £500 to £520

Family support benefit is a discretionary welfare benefit which is not presently paid consistently to all children in Gibraltar. In addition, the present discretionary system suffers from the unfairness that eligibility is lost where one parent earns in excess of £20,000, subject to small amounts of marginal relief, but not when both parents together earn up to £39,999. This means that families with a joint income of just under £40,000 get it, while others with income from just one wage earner of just over £20,000 do not. To redress this, as from 1st August 1999 eligibility will be to children whose combined parental income does not exceed £30,000. In addition, it will be paid at the higher rate of £40 per month, it is presently paid at £30 per month, to children whose parental combined income does not exceed £15,000. From 1st August 1999 all children, other than as is the case now the first child, will be eligible, regardless of nationality, provided that either parent has been present and established in Gibraltar for at least 10 years and the child is lawfully present in Gibraltar. In future this benefit will be known as Child Welfare Grant.

The Government acknowledge that the cost to parents of maintaining grant supported children at UK universities is an ever increasing burden on family economies, particularly in the case of fixed income families. Accordingly, the departmental allowance will be increased by £2500 from £6000 to £8500. When one applies this to the formula it represents a decrease in parental contribution of £250 per annum. In the case of families whose joint parental income does not exceed £20,000, the departmental allowance is increased by £4000 from £6000 to £10,000 which will represent a decrease in parental contribution of £400 per annum.

At present, up to £600 of interest income paid on deposits with a building society are exempt from income tax. Following the redefinition of building societies as credit institutions, in common with banks, with effect from 1st July 1999 the existing tax exemption will also apply to deposits held at banks in Gibraltar.

I have often said that, in our view, it is not the role of Government to hoard money at the expense of unnecessarily high levels of taxation. The role of Government is to raise monies to provide decent, modern public services, to invest in our future and to make provision for a reasonable and prudent level of reserves.

The Government are satisfied that we have made provision for our public services; we have made provision for investment in our public infrastructure; we have made provision for increased reserves; we have already reduced taxation considerably; we have just announced and in the past had already announced, assistance to small businesses to enable them and to businesses generally to enable them to maintain levels of employment. The Government consider that in those circumstances it is right to return a share of the surplus left after the Government have been able to do all these things, to whence it came which is the pockets of taxpayers, it is and will remain the political philosophy of this Government in matters of income tax that having made a prudent provision for the collective needs of this community, as represented by the Government on the one hand, that the surplus of funds left over should be shared with individuals who are entitled to retain the greatest possible share of their own earnings for the benefit of their personal economies. We believe that this budget and the measures that I have announced today represents a prudent and fair balance between those two equally legitimate competing interests and I therefore have not the slightest hesitation in commending this Bill to the House.

HON J J BOSSANO:

Mr Speaker, the Chief Minister would have no hesitation in commending the Bill to the House irrespective of the contents of the Bill and the people around him would have no hesitation in their adulation irrespective of what he said so I do not think the end remarks or the end response signifies anything.

Let me say that it would be easier for us to make an assessment of what the Government consider to be prudent or what the Government consider to be appropriate in terms of reserves if one could discern any difference in the self-congratulatory tone depending on the results. It is quite obvious if we look at previous statements in this House at budget that if it so happens that the estimated level of surplus is £7 million as it was in the estimate presented in 1998/99, the Government tell the House that that is what is considered to be the prudent level and if it turns out that the outturn is £16 million then the Government tell the House that the £16 million level is a prudent level. So it is not that the Government have a philosophy that says, "If we have a surplus of £7 million that should go into the reserves but if we have a surplus of £10 million, since we think £10 million is too much, we will do something to bring it down to £7 million again". That is not the case and therefore to say, "I have no hesitation in deciding that this year's estimates of £13 million is the prudent level of surplus" because of course a year ago £7 million was the considered prudent level of surplus and the year before that, when the Government were intending to rundown the reserves to £12 million, when we asked from the Opposition what their philosophy was, the answer was that although they had not yet spent the £20 million that there was then in the kitty they had every intention of doing so. So it is simply the case that what is appropriate happens to be what materialises and it is also the case, from the copious notes that the Chief Minister has read, having been told by Mr Speaker that he would not read his speech and he seems to have done more reading this year than every before, I do not know whether it is just to spite your remarks, Mr Speaker, obviously I have no choice but to have copious notes because I am reacting to what has been said so I cannot come prepared

and, in any case, I have never been able to produce prepared texts nor have I ever wanted others to produce them for me. But given the content of the statistical analysis that has been made, it seems to me that the Government pay very little attention to the information that they give in this House in answer to questions because the answers we have received over the year to questions on a whole range of financial statistics, which bore some sectors of the press according to their editorials, nevertheless come in useful once a year which is when we sit here and we hear an explanation of the state of the economy which does not tally with the information that has been provided. We know, of course, that the Government do not do a great deal of reading of the answers to the questions before they come to the House because it is more than once that the answer that is given, even though it is in written form, is not in fact the correct answer to the question that has been drafted and in some cases we have to wait to get the answer at a later stage.

Turning to the technical content, as opposed to the political content, of the speech in support of the estimates, I would like to start off with the contribution made by the Financial and Development Secretary. Let me say, Mr Speaker, that I do not think it is a very acceptable state of affairs to have, when one arrives in the House, replacement pages for estimates which were tabled in the House in April. It is difficult to understand how it was that in April the Treasury thought that they had paid £1.4 million to Moroccans who had left in the last financial year and they discover in June that they had not paid it, that they had paid £700,000 less. If they had discovered it earlier I would have thought it would have been reasonable for that information to have been communicated to the Members of the House who had been looking at these estimates on the premise that the money had been spent which seemed strange given that during the course of the year we had been told that the take-up had not been as high as the Government had wanted it to be. We also have, in addition to that change, which produces a new page in replacement of page 5 where we are told that the outcome for the year was £700,000 less in expenditure from the reserves than the printed book shows, we also have this change to page 4 where

the recurrent expenditure we have been told should show £119,897,000 instead of £120 million. And this is because the £900,000 of debt repayment is being shown as a charge to the reserves rather than coming out of the recurrent expenditure. Mr Speaker, we had a similar – I will wait until the Financial and Development Secretary explains to the Chief Minister what it is I am talking about.

HON CHIEF MINISTER:

No, if the hon Member will give way. I will tell him, it is actually the other way around but I do not see why he has to be offensive about it. The reality, if he wants to know the answer to that, Mr Speaker, is that it is not in order to pass something from above the line to below the line, it is in order to prevent it being accounted for in both places as it presently appears.

HON J J BOSSANO:

I am well aware of that. It is quite obvious that it is being accounted for in both places and in case the Chief Minister has forgotten, it was accounted for in both places last year and the same correction was made last year. True, but we do not expect, Mr Speaker, that in June 1999 we get a replacement page because £1 million has been shown twice and the same thing happened a year ago and the same replacement page was produced a year ago. But it is even worse than that because a year ago when I pointed this out to the Chief Minister as an anomaly, the fact that it is in the two places, he took great objection to the word anomaly and, in fact, in drawing his attention to it I said, "Perhaps if it is not an anomaly then it must be an innovation". He then found that innovation was quite acceptable because he is a very innovative person. Well, the only problem with his innovation of last year is that the innovation has been removed from the forecast outturn. If we go back to what happened, and let me say that when I raised this point a year ago I explained that it was not just a question of appearances, it was also a question that we actually felt quite strongly that as had been the case all the time, until a couple of years ago, the

servicing, the capital repayment of the public debt was a charge on the Consolidated Fund and was not shown as a separate item and if there was a payment in one year, for example, in 1996 the General Sinking Fund received from that year's revenue £20 million but actually reduced the public debt by £30 million. Of the £30 million debt that was repaid in 1995/96, £20 million came from that year's revenue. If we are going to go back and compare how strong or weak or whatever this year's financial outturn is, then we can only do it by using the same methodology in making the comparisons. Let me say that last year, in introducing the change the Government originally in the draft estimates in the House did not show the amount that was coming out of the Consolidated Fund to repay debt as a separate item, it was included in the figure of the total estimated expenditure and therefore the total estimated expenditure, if we look at last year's estimates, was £115 million and that included £1 million of debt repayment. In the same exercise this year we see a repetition of that happening. When we come to the Consolidated Fund charges the direct charge on the Consolidated Fund which does not require the appropriation of the House, originally in 1998/99, included a public debt repayment of £1 million and that was shown in page 26 of last year's estimates. Of course, the £1 million there meant that the total expenditure of that year was £115 million and the draft estimate brought to the House showed that. The Government then said, "We are taking it out of the reserves" and that is where the double counting came in, because it was already included in the £115 million. We have now, this year, a position where the estimates before the House which were circulated earlier, showed £120,797,000 as the estimated expenditure for the year 1999/2000. This was on page 4 and, of course, the £900,000 shown as public debt repayment on page 4 was already included in the £120 million, this is where the double counting came in. But when we go back to the actual body of the estimates, on page 17, we have total recurrent expenditure £120,797,000 and that is not being altered so we have a summary on page 4 which tells us total recurrent expenditure is not going to be as was printed £120 million, it is £119 million but page 17 still says that total recurrent expenditure is £120 million. What did the Government do last year with these figures? I will tell

him because when I told him last year he was unwilling to concede the point or unable to understand it, I am not sure which it was. But he can find the same operation happening in the forecast outturn for 1988/89. If we compare the position in 1988/89 with the estimates for last year brought to this House, then if last year they put £1 million of public debt repayment on page 10 of the estimates, then the figures on page 5 this year should reflect the amount that has actually been paid out of that £1 million in debt repayment and it does not. Yes, because there has been £100,000 paid and that is shown in the Consolidated Fund charges..... *[Interruption]* Yes, the Consolidated Fund charges are part of the £119 million and the Consolidated Fund charges in the previous year, apart from the £114 million and the £114 million for 1998/99 include the debt repayment. There has not been double counting but what has been done was that last year they removed it from above the line and put it below the line and then in the forecast outturn they put it back where they had it in the first place. The fact that the figure this year at the end of the year happens to be £100,000 instead of £1 million, if I can draw the Chief Minister's attention to the place where this is in the estimates. If he looks at the summary of the expenditure the summary of the expenditure obviously includes the Consolidated Fund charges which are not part of the Appropriation Bill. In that summary of expenditure the original figure was for a total amount of £1 million, this is on page 20 of this year's estimates, and the public debt repayment shows an outturn of £1000. Given the fact that the Government say the public debt repayments must not be included in the figure, the £19,600,000 should in fact, to be consistent with the argument that they have put this year, have been reflected in the outturn has not been included. Presumably if for some reason, because I can only suppose that the maturity of the debentures last year did not take place within the financial year as they had expected, that is the only possible reason that that could be why it has fallen within this year rather than the last. But when the matter was pointed out last year, the argument that was put in answer to that was that it was a perfectly correct way of dealing with it which we agree that there is nothing either correct or incorrect about it, it is equally legitimate to show it in one place as to show it in another, obviously what cannot be

done, as was done by mistake last year and again by mistake this year, is to show the amount twice and it has to be removed from either one end or the other end but as far as we are concerned in the outturn for 1998/99 the amount that was actually paid is included not as coming out of the reserves but as forming part of the forecast outturn of recurrent expenditure. In terms of other changes that we are getting, we are also getting a new page for the Employment and Training Board. Here in the new page for the Employment and Training Board what we have is, first of all, In the circulated estimates of April we have an amount which is shown in the forecast outturn as being reimbursement to the Government from the Employment and Training Board of £760,000, conspicuous by its absence from the contributions that have been made so far although this is a very peculiar entry, one that was not there in last year's estimates, one that is being repeated in this year's estimates, one that is shown in the forecast outturn and one for which no explanation has been provided as if it did not matter.

HON CHIEF MINISTER:

Can I perhaps suggest, if the Leader of the Opposition would give way, that the reason why he has not had explanations on this minutiae is because we are supposed to be debating the principles of the Bill, the details come in Committee Stage.

HON J J BOSSANO:

I suppose £1 million is minutiae for the Chief Minister. I would have thought that the principle at stake here is that the income of the Employment and Training Board last year was increased from £1.2 million to £1.8 million, £600,000, and that was a 50 per cent increase in the training levy. This is not minutiae, this is a matter of principle and the principle was that employers were being asked to pay £3 instead of £2 for training and that the money instead of going for training is going into the Consolidated Fund as reimbursement to the Government. The Chief Minister might think that is a minutiae, I think it raises an important point of principle. In fact, the Minister for Employment at the time

described it as a tax and although we questioned whether it was a tax, it is quite obvious that he must have had a crystal ball and knew where the money was going to finish up because the money has finished up not in his department for his use but in the pockets of the Treasury and therefore it has turned out to be a tax. The point that I am raising, far from being a minutiae, is a point that it is an important point of principle. First of all because it was not something that was put there a year ago or explained, as a change of policy at any time during the year, we have only discovered the decision after the event. In the estimates of last year there was no previous years' expenditure reimbursement to the Consolidated Fund. There was a current year reimbursement and we questioned the logic of having the Government give the ETB £145,000 and the ETB give the Government £250,000. We questioned the logic but, of course, we questioned the logic because we assumed that the Government were going to give £145,000 to the ETB as a contribution towards training. The result was not only did they not give the £145,000 and kept the £250,000, but on top of that they charged the ETB £760,000 for money provided by the Government in previous years of training and they have included in this year's estimates another charge of £836,000 in respect also of previous years' training so not only are the Government not paying anything at all from general revenue for training, that is the whole of the training is being met by the employers' training levy and the contribution from the European Social Fund, the whole of it, not only that, since the whole of it is not being spent on an annually recurrent basis the surpluses are not retained for training in the future or for when they may not get so much money from the EEC, no, they are being reimbursed to the Government. Well, I would have thought that that is an important point of principle which is not something that has happened before in previous budgets and which is being introduced as an innovation by the Government and no mention or explanation has been made nor has attention been drawn to it. In fact, there is also the peculiar amendment in that the original appendix B in the estimates show that the ETB receipts for this year were supposed to be £760,000 from a balance brought forward and it is quite obvious that just like they made a mistake of counting twice the money going to repay the debt, they have

made the mistake of counting twice the money that they were being reimbursed because they did the two things. With the £760,000, with the same money they did two things: (1) they kept it and carried it forward and (2) they gave it away and gave it back to the Financial and Development Secretary. Since they realised that they cannot use the money twice, they have corrected that and the amendment in the page that has been circulated today in fact shows that the £760,000 is no longer being carried forward but the figures are not changed because the EEC is stepping in to rescue the Government and the amount of money they are going to get from the EEC goes up by £700,000. Either, Mr Speaker, these figures are simply altered to square the balances so that the bottom line is unchanged or it is very strange that in terms of estimating the money that they were going to bring in from the European Social Fund the House was told in April that the forecast outturn was £1.1 million from the European Social Fund and that we expect another £1.1 million in the next 12 months and we are told today, "No, we do not expect another £1.1 million, we now expect £1.8 million". That is a very substantial increase in the amount of money that has to come in from the EEC and we would like to have an explanation how it is that today they have come to the conclusion that the European Social Fund will be paying £1.8 million in this current year, which is very welcome that it should be so much more than was expected, but why it is they did not know it at the time that the estimates were provided and they put £1.1 million. I must say it has all the hallmarks of somebody deciding, "Well, since we have got to correct the £760,000 at the top what do we do? Let us add £600,000 to the training levy and make that estimate £2 million instead of £1,940,000 and let us add £700,000 to the £1.1 million and make that £1.8 million and then the total at the bottom stays the same". That is what it looks like but if it is not what has happened then we would like to have an explanation at some stage when other Ministers contribute or maybe when the Financial and Development Secretary, if he wants to say something at the end of the general principles or at the Committee Stage. The estimates, in fact, explain this reimbursement procedure as being the recovery of expenditure of £3.1 million in 1996/97; £1.1 million in 1997/98; and £1 million in 1995/96. Obviously, when the money was paid into the ETB in

those years from the Consolidated Fund it was paid on the basis that from the overall revenue of the Government money was being given to provide support for training schemes or vocational cadets or whatever. I do not think it was the intention then that this should in future be recouped and therefore it is a new philosophy that the money that has been spent in the past three years by the ETB should now be recovered by the Treasury from the ETB's income from the EEC or from the training levy of employers. It certainly seems strange that the Government should have thought it necessary to increase that £1, which we support on the basis that it is for training but we do not support on the basis that it is for anything else but if it is money that is going to go into more training, fine. But it is quite obvious that it is not going to go for more training; it was obvious then that it was not going for more training because they were not increasing the amount of training funds by 50 per cent but it does not make sense, in any case, Mr Speaker, in the context of the things that have been said today. If we are talking today about the need to reduce what the employers pay, if we are talking about need to have a lower rate of tax on small businesses, then on the one hand we have a Government that say, "We are going to help the private sector and instead of paying £26 to the Insolvency Fund they are going to pay £18 but instead of paying £104 as a training levy, when it was £2 a week, they will pay £52 more". So they remove the Insolvency Fund contribution, they take off that £8 and they add £52 to the training levy when they are not going to use it for training. They are going to use it to charge present employers for money that has been used for supporting training schemes going back to 1995/96. There seems to me to be a contradiction in terms of policy in doing one thing in one hand and another with the other. Admittedly they were not both done at the same point in time and maybe at the time that they did it they were not so confident of the revenue flows that they would have as they are today but when we look at those revenue flows, when we look at the results that we have in the outturn for this year and in the projections for the next. The Chief Minister has said in his contribution that the evidence that they have is that the private sector is doing well and he has talked about the reflection of this in the high level of revenue that the Government are collecting. Of

course, he did not believe at one stage in his career that the revenue that the Government collected was any indication whatsoever of the state of the private sector, he always used to argue that in order to know what the state of the private sector was one had to be out there working and that if the fact that the Government were collecting higher levels of revenue was no indication of anything. It is not a view that he holds with the same degree of conviction apparently today as he used to in the past but be that as it may, let me say that in any case the figures that we have before us do not support his thesis. We do not have evidence here or indeed in the answers that he has given to questions that I have put over the years when I have been monitoring, as he knows, the progress of collections related not just to the year in which the revenue is collected but the year in respect of which it is collected which is perhaps even more important. Because of course, if we make a projection of the state of the private sector or if we make a projection of the reliability and solidity of Government revenues then we need to know to what extent the present earnings are yielding revenue and to what extent the revenue reflects a higher level of collection of past taxes. That I think is a very important distinction.

In the figure that was brought to the House a year ago we have a sum anticipated of £122 million in collections and the outturn is now predicted to have been £130 million. The difference of £8.5 million in terms of trying to identify, there are small items going one way or the other which can cancel out but in terms of trying to identify big sums of money which make up that £8.5 million, what we have is £5 million – the biggest item of the £8.5 million – being the import duty which is £25 million instead of £20 million and which is projected to remain at £25 million. It is, in fact, incorrect and the Chief Minister knows that it is incorrect, to say that the £25 million, that is to say, the fact that there are £5 million more is a reflection of the level of trade that is taking place in Gibraltar because it is not the case. In 1997 and 1998 when we were looking at import figures the Chief Minister said in his contribution that the figure had come down from £24 million in 1996 to £20 million because of the drop in the sales of cigarettes. In fact, it had come down from £22.7 million to £20 million. But, in fact,

what we have today is that the increase is not simply an increase because of the increase in duty which happened way back in 1997, but an increase in volume and the whole of the £5 million; that is to say, in the estimate of £20 million to £25 million, the whole of the £5 million is due to that. Therefore other goods, which account and have always accounted for a relatively small share of the total. There are three items that make up the picture and have always made up the picture but those other goods are at best static. So that is not an indication that the revenue is higher by £5 million because there are £5 million more in import duty because of the turnover of the private sector being better, it is not the case. It is, of course, the case that the Government have £5 million more than they expected and let me say that last year when I pointed out to the Chief Minister that he was conveniently ignoring in all this the fact that they had stopped providing any funds for Community Care, his reply was that given the fact that there was less money coming now in from cigarette sales it was regrettably a price that had to be paid that Community Care would not have more money provided because it was not coming in. Well, now it is coming in so there is no reason why it should not be giving it except that they do not think that there is any need for it. So, in fact, whether it comes in or it does not come in is a totally irrelevant consideration and that particular argument which he put a year ago in reply to my pointing this out to him, that the entire surplus would disappear if he had repeated the £15 million or anything near the £15 million grant to Community Care, his argument was that because they were funded, predominantly if not entirely, from the duty on cigarettes and this was no longer coming in in the same volumes, if he wants I can point the page where he said it, Mr Speaker. Well, this is no longer the case because, in fact, the entire improvement in import duty is due to that reason. If we look at the other elements there is a £2 million increase in the amount collected in income tax. The estimate of £47 million, of course, includes non-PAYE as well as PAYE but when we look at the amounts that have been collected in respect of PAYE what is obvious from the answers that have been provided in questions in the House, is that the tax payable by employees in the private sector is a diminishing proportion of the total every year. That can

only mean one or two things and it probably is a combination of both which is that earnings in the private sector are not keeping up with earnings in the Government sector and numbers in the private sector are not keeping up with numbers in the Government sector. If it is a combination of one of the two I think the most probable answer is that it is part of one and part of the other but, of course, it is another indicator that the Chief Minister is wrong when he says the estimates reflect the soundness or the health of the private sector because it is as healthy or as unhealthy as it was in 1996 when, according to him from the Opposition, it was in a state of disaster and all this improvement that is supposed to have been brought about by all this new Government organisations, well they may produce an improvement in the health of the private sector whether it is healthy or unhealthy but if it is anything it is marginally lower than it was in 1996, it is not even marginally higher. If there are improvements they have not yet arrived. We have got serious doubts that the money that is being put in this, just like I must say that the input/output study which I will have more to say at a later stage, Mr Speaker, past experience of the input/output study do not show that they have proved to be particularly suited to the structure of the economy of Gibraltar in terms of their predictive value. I think we only need to remember what the input/output study produced by PEIDA predicted and what materialised in terms of variables or when the MOD study was done using the same input/output model, how out of touch with reality the predictions turned out to be. So it seems to me that if we are going to be spending more money on more consultants, I would have thought the Government would do well to take a close hard look at what the consultants produced the last time round if they are going to use the same people with the same methods. I think, in fact, the last time they were not contracted by Gibraltar, I think they were contracted by the UK as part of the UK aid in the period of the MOD cuts.

Continuing, Mr Speaker, therefore with the components of the difference we have the element of the ETB which I have mentioned. That is to say, if we look at the original estimated revenue, the original estimated revenue was that there would be

no reimbursement of money from the ETB to the Government. If we compare the £130 million this year with the £122 million of last year, £750,000 of that difference is the fact that the money has been passed from the ETB back into the Government and it was not intended a year ago that this should happen. So that is not, in fact, an indication of improved revenue of anything, it just means that they have spent less money in the ETB than they planned to do and that instead of being allowed to retain that money they have been asked to give it back even though the money was not coming from the Government themselves in this year. There is £0.5 million of company tax and at first sight one might conclude, well perhaps after all here we have at last an indicator that there must be some improvement taking place in the profitability of the private sector because in company tax they budgeted to collect £10.5 million and they have now forecast that they have actually collected £11 million, £0.5 million more. However, Mr Speaker, if we take a look at the footnote in the estimates on page 10, one will see that it says, in respect of the money shown for the telecommunication dividends, "From 1998/99, corporation tax in respect of the dividends not refunded to subhead 6(18)" which means that, in fact, the corporation tax payable by Gibtel was not presumably included in the original estimate and is reflected in the outturn because this was not a note that I recall being there in the estimates that were prepared for the House a year ago when the original estimate was put. Perhaps the Chief Minister can look at that point and tell me whether I have interpreted the footnote correctly. The 1997/98 figure was £10.75 million so if we have a position, Mr Speaker, where in 1997/98 the tax was credited to Head 6, subhead 18, which is dividends, what we have is that in 1997/98 there is a figure for dividends of £1,026,462 from Gibtel but in that £1 million is included the company tax on the Government's share of the dividend because the Government received their dividend gross of tax. In 1998/99 the dividend goes down to £800,000 and as I understand it the footnote is to explain that it is not that it is going down because Gibtel is paying less benefit to the Government, it is going down because instead of being shown there it is now being shown as part of the corporation tax which is in Head 1, subhead 2; and therefore when we compare the £11 million outturn with the previous year

of £10.75 million the whole of the difference between the £10.75 million and the £11 million is the shift of the £200,000-odd from Head 6, subhead 18 to Head 1, subhead 2. So I am afraid that the improvement in the corporation tax is not an indication that there has been an upturn in the profitabilities of companies in 1998/99. However, the Government are, in fact, expecting £0.5 million more in the next 12 months and last year I asked but did not get, that we should have an indication, because this is going back to the question of the central arrears unit of which we have heard nothing on this occasion but which featured prominently last year and equally prominently the year before that, and I asked at the time, because it made sense if we are looking at recurrent revenue and recurrent expenditure just like the Government may argue that things that are one-off should not be shown as recurrent expenditure then up to a point one-off collections of backlogs are worth identifying on the premise that they will not be repeated every year. The same argument applies on both sides, on the expenditure and on the income. Well, I do not know whether the £0.5 million that they are planning to collect in company tax in the next 12 months, I can only assume that they do not expect to collect £0.5 million more as a result of reducing the tax for small companies; if anything we ought to be expecting to collect less, not more, but having announced that small companies are going to be paying 20 per cent instead of 35 per cent which, as the Government have said quite correctly is something that exists in most European countries, the small company tax for people with either a low turnover or a small number of employees or perhaps a lower level of profits, I am not sure that the profits is such a significant amount in terms of defining a small company but anyway, the point is that one assumes, since nobody is suggesting that the estimates be changed, that the £11.5 million already assumes that whatever revenue will be lost because it goes down from 30 per cent to 20 per cent, assuming any small companies are making profits of which they can neither pay 20 per cent or 30 per cent, that has already been taken into account, that the £11.5 million is post that change because nobody is suggesting that the figure should be changed. But, of course, if the £11.5 million that is there is the expectation in terms of collections then I have to say the answer

to recent questions on the assessments shows that there has been for 1996/97 and 1997/98 some small decline in the level of assessments from 1995/96 when it was, I think, at £10.5 million. Therefore I can only assume, from the answers that I have had to the questions and the figure that there is in the estimates, that the extra £0.5 million over the next 12 months is not a reflection that in 1998/99 company profits have gone up and that is supposed to be producing a greater yield but that there is going to be a more effective collection of arrears of company tax than was the case in the last 12 months.

The collection, of course, of arrears was one that last year, Mr Speaker, we had difficulty in analysing in relation to one particular item which was the question of the electricity arrears which was raised on several occasions during the budget and then on several occasions during the rest of the year and even in the last meeting of the House when, in fact, the answer that was given to the question of arrears was not arrears at all but collections inclusive of arrears even though the question that been tabled was quite specific in asking for a breakdown of the arrears. And this is because at the time last year when the figure was shown at £8.8 million, which was an increase of £1 million than the preceding year, we asked is it that the sales of electricity are increasing or that the collection of arrears is increasing and we were told it was the latter. In August when we put a question on this there were indications that, in fact, it was not happening. My hon Colleague will be dealing with that and I hope the Minister will be explaining that position when he comes to make his contribution but irrespective of that, I have to say that as a result of putting together the information that has been provided in different answers what is clear is, of course, that what they were hoping to achieve was not in fact a reduction of the arrears but to stop the escalation of arrears and I think that was not immediately obvious either from looking at the figures or from the replies that we got. That is to say, arrears of electricity had gone up by £1 million in the previous year, £1 million in one year and what the Government were saying a year ago when they said, "We are going to collect £8.8 million" was not that they were going to reduce the arrears from the figure of £5 million as we thought we

had been told, what they were really telling the House was, "We hope to stop it going up to £6 million" because in fact when we started asking questions about billings what we have discovered was that the billings were running a year ago at the £8.8 million and that what had happened in the preceding year was that the actual arrears had gone up from £3 million in 1996 to £4 million in 1997 to £5 million in 1998 and that they are still at £5 million now and that, in fact, what the Government were planning and what they appear to have achieved is that they stopped it going up from £5 million to £6 million. I am surprised that that explanation which is the explanation we have concluded after doing an enormous exercise was not provided, since it seems to be a straightforward explanation that could have been given a year ago when we raised the question. Why is it that the Government are planning to go up in collecting from £7.8 million to £8.8 million? Perhaps they did not want to say to the House, "Because when we have collected £7.8 million we have actually sold £8.8 million and the arrears have gone up by £1 million and what we are hoping is that that, which has happened for two years, will not happen again this year". Perhaps the answer when we were not given that clear-cut and simple explanation is that it was in the context of so much song and dance being made of the effectiveness of the Central Arrears Unit precisely over those 24 months. It was in those 12 months when we were being told about the effectiveness of the Central Arrears Unit that those arrears went up. In that context as well, Mr Speaker, we were told that there was this contract with LPS for the collection of those arrears which was not producing results, apparently because they were not getting the information that they required or the co-operation that they required from Lyonnaise des Eaux to enable them to collect those arrears and that one of the reasons why the arrears were mounting was because Lyonnaise was being more aggressive in collecting their share of the bills, the water element, than they were in the electricity element. But, of course, we were told then that there was no money in the estimates to pay LPS precisely because that situation was not satisfactory and was being ended. We have now seen that money was paid to LPS in the last 12 months and that money is going to be paid to LPS in the next 12 months and

presumably that means that whatever problem there was has now been cured.

There is, in addition, Mr Speaker, in this part - I have not got past the beginning of the estimates, I am still on the first page - there is also this reference to the £1 million and the Contingencies Fund. The Financial and Development Secretary reminded us that at the time that the Government Insurance Fund was dissolved the reserves in that Social Insurance Fund were paid into the Contingencies Fund and that was shown in the estimates at the time. He tells us that there is now in place insurance cover and that consequently the money is no longer required. Well, I am afraid that that explanation might have sufficed if the Government Insurance Fund had not been dissolved. If the Financial and Development Secretary had kept the Government Insurance Fund with the £1 million in it and then said, "I am now taking out private cover and paying premiums and consequently I do not need the Insurance Fund, I will now dissolve it". Then that explanation might have fitted what was happening, but this is not what happened. What has happened is that the Government decided to dissolve the Insurance Fund some considerable time ago and presumably at the time that they dissolved it negotiated or obtained quotes for insurance cover and instead of deciding to put the balance of the Insurance Fund in the Consolidated Fund, they chose to put it in the Contingencies Fund. The Contingencies Fund, as the Financial and Development Secretary says quite correctly, is in fact covered by the Constitution but the Constitution says one cannot take the money out of the Contingencies Fund. What the Constitution says, Mr Speaker, is that the money in the Contingencies Fund is there for one specific purpose, it is not there to meet insurance cover or anything else; it is there to meet the expenditure for which there is no provision in the estimates and which is a matter which cannot wait and cannot be left until provision can be made and what is provided in the Constitution is that once the money is taken out of the Contingencies Fund, which it is done by the authority of the Financial and Development Secretary, it is an advance from the Contingencies Fund to meet that specific expenditure and that advance is refundable by means of a supplementary estimate laid

before the Assembly and an Appropriation Bill introduced as soon as possible for the purpose of replacing the amount so advanced. Well, I do not see how the Financial and Development Secretary can now ask us to remove from the Contingencies Fund £1 million and transfer it to the Consolidated Fund because I do not think we have got the power to do it. In fact we have no power to do anything at all with the Contingencies Fund in this House, the only thing that we have got is an obligation under the Constitution to restore to the Contingencies Fund any money the Financial and Development Secretary takes out to meet, in the words of the Constitution, "urgent and unforeseen need for expenditure for which no other provision exists". So the Fund is there so that the Financial and Development Secretary faced with an urgent and unforeseen need for expenditure for which he can find no Head or subhead or virement that he can make use of, goes to the Contingencies Fund, takes the money out and then comes back to this House. I do not think anybody in the House or in the Government, to my knowledge, has ever produced any scientific formula as to what should be the level of the Contingencies Fund in relation to overall Government expenditure. It seems to me that the money that was established there at one stage at £200,000 - I think in our time in Government we put it up to £400,000 or £200,000 to £300,000 - but it was not based on any parameter of relativity between the size of the Contingencies Fund and the size of expenditure simply on the premise that if in an inflationary world if there was going to be an unexpected unforeseen need for expenditure then with the passage of time the need for resource to deal with the unforeseen would need to grow with time. I believe that the way the money is now being removed from the Contingencies Fund is not consistent with the provisions in the Constitution. We have got the power to vote money out and although in fact in the estimates it is presented on the basis of the money being repaid as if it was a loan, it certainly was not put to the House that we were lending money to the Contingencies Fund at the time that we put it in nor has the Financial and Development Secretary, in the words that he used in his introduction to the Appropriation Bill today, indicated that it is a loan which is being repaid because if it is a loan that is being repaid then I do not see what the House has got to support or

approve to or agree to or anything. If it is a loan being made and the loan is being repaid then why should it feature in the Appropriation Bill?

HON CHIEF MINISTER:

Will the hon Member give way at a convenient moment? Mr Speaker, just for the benefit of the hon Members at this stage, obviously I will come back to it in more detail during my reply which may not be until the end of this week. Suffice it to say that all these assertions that he makes are not shared by the Government who have opinions to the contrary. So I just do not want him to think that the issues to which he is addressing and announcing categorical expositions have not been thought of or addressed by the Government, they have been addressed and thought of in great detail. The legal advice that we have differs from the conclusion to which obviously he has made for himself, I do not know whether with the benefit of advice or just on his own reading of the provisions.

MR SPEAKER:

We will adjourn now for 10 minutes.

The House recessed at 5.00 pm.

The House resumed at 5.18 pm.

HON J J BOSSANO:

Mr Speaker, I was drawing the attention of the House to the decision of the Government to remove the £1 million which had previously been contributed to the Contingencies Fund. I note the comment by the Chief Minister that they have looked into this and taken legal advice. Well, irrespective of that, we are going on the basis, first of all, that of course this has never happened before and therefore there is no question of their being able to point to

any previous occasion when a similar transaction took place. And on the letter of the law, I do not think there can be any question of what the law says. The Public Finance (Control and Audit) Ordinance says, "The Contingencies Fund shall consist of monies from time to time appropriated thereto and all monies so appropriated shall be paid from the Consolidated Fund into the Contingencies Fund". That is, as far as we are concerned, what we did originally; we appropriated the money from the Consolidated Fund into the Contingencies Fund which is something that has happened before. There is nothing in the law about money being removed from the Contingencies Fund and being put back into the Consolidated Fund. What the next subparagraphs of Section 44 of the Public Finance (Control and Audit) Ordinance says is, "The Financial and Development Secretary shall apply the money in the Contingencies Fund in accordance with the provision of Section 67 of the Constitution". The law does not provide for anything to be done with it other than what the Constitution says and what the Constitution says is that the Financial and Development Secretary, if he is satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, has got the power to make advances from the Fund to meet that need and that any advance made from the Contingencies Fund is followed by a supplementary estimate, which is, as I quoted before, laid before the Assembly and an Appropriation Bill. Nobody is saying here today, "We are taking out £1 million because of some unforeseen emergency" it is simply that it is more convenient to have it in the Consolidated Fund than in the Contingencies Fund but, Mr Speaker, when the estimates for the previous year were brought to the House when the money was put in, it was put in on the basis that it was a contribution and a contribution is money that is appropriated and not money that is lent, as far as we understood it at the time; the intention was not to make a loan. If what we are doing is simply saying, "Well, because the Government now want to take it we shall deem the money to have been lent instead of appropriated" well maybe that is the same methodology that is being used to assume that the money from the EEC to the ETB is going to be £1.8 million simply because they have got to remove £700,000 that they had put in as a double entry or that the money

from the levy is going to be £2 million because they have got the £40,000-odd element to take care of. But, frankly, we I think have got an obligation to draw attention to this and to question it because of course that is why the matter is being brought to the House, so that we look at it and do our homework on it and then express our views and that is what we are doing.

Mr Speaker, moving on from that particular element, in looking at the revenue I pointed out that there was this unusual unprecedented strategy of charging the ETB for previous expenditure funded by contributions from the Consolidated Fund which are now being clawed back. I think another element in the forecast outturn and the estimates in terms of Government revenue which require some explanation which has got, it is not a parallel but has got perhaps a resemblance to this transaction, is the fact that the amount that is being charged to the Social Insurance Funds by the Government for managing those Funds has shown an astronomical increase over the last 24 months. If we take, on page 13, the management charges from the Government to the Social Insurance (Closed Long-Term Benefits) Fund, we can see that the operation of that fund by civil servants produced a charge to the fund of £303,000 in 1997/98; £374,000 in 1998/99 and £415,000 in the forthcoming year. This is an increase of 37 per cent over two years and it seems higher in terms of administration costs over that period than is compatible with the movement of wages in the period under consideration. It has always been the case that the cost of managing the fund, the cost of making payments to senior citizens is carried out by the Government but not paid for out of general revenue but paid for out of the income of the Social Insurance Fund, that has always been the case. But in the absence of any other explanation we can see nothing here that explains why the costs - this one, in fact, shows a higher cost than any of the other ones but even the others are all showing increases which are not of the same order but showing increase which should perhaps reflect more the effect of the increases in salaries in the civil service and that is what we would expect and that is what has always been the norm. Here we have got a situation where from the management of the Social Insurance Fund, in fact, the four funds will have

provided the Government in the year that we have just finished with £623,000 as compared with £498,000 in 1997/98, an improved Government revenue of £150,000 but only because it is coming out of the income of the Social Insurance and the Pension Funds.

In a number of other cases the changes in the revenue, Mr Speaker, as I mentioned earlier, in some cases are up or down but the net effect is that they tend to cancel out. I would, however, question how it is that we have, for example, in the case of the Shipping Registry a figure in the estimates of £156,000 and an outturn of £53,000. The £156,000 was a major improvement in 1998/99 over 1997/98. The House will recall that the Government decided to terminate the contract for the Shipping Registry to lose the Category 1 status that Gibraltar had and then to have it reinstated as a result of it being done as a Government rather than a contracted out facility. If they were expecting that to result in revenue of £156,000 and they have only achieved £53,000 and they are only budgeting for £53,000, that is not an indication that they got the money later in the year or that they got less and they are expecting it to catch up. What we are being told in these figures is essentially that shipping registration is now expected to bring in one-third of what the expectations were a year ago and I think that requires an explanation.

Mr Speaker, I notice that the port departure and arrival tax outturn is £140,000 and £140,000 is the projection for the next year which is, again, an indication that there is no increase in revenue from this source and it may well be that the explanation is this concession for repeated visits but if that is the explanation then we would like to have confirmation of it. Because in the absence of any other explanation a figure like that would indicate a static volume.

The management of the Savings Bank, Mr Speaker, is one of the elements that has contributed to the higher estimate of revenue shown for the forthcoming year. Let me say that in the appendix at the back which shows the projected income and expenditure of the bank it is quite obvious that it is the result of recently

announced changes in interest rates that are creating the differential between income and expenditure which is going to enable the Government to make a profit of £2.5 million on the Savings Bank. I would have thought that the Savings Bank is being put in a position of not being competitive in the market if it is going to have a situation where the rates that are being offered are being substantially lowered at the same time as the commercial banks are being given the same £600 concession as the building societies. I do not know whether it is the view of the Government that they do not particularly want to encourage the Savings Bank to be the medium into which people put their savings but certainly we feel very strongly, and it was one of the reasons why it was done in the first place, but we knew that there was a certain volume of money that was being kept in the United Kingdom and in other places but mainly in the United Kingdom in Government debentures and UK Government Savings and this is why we thought it was necessary to provide tax advantages and attractive interest rates to get that money back to Gibraltar and a lot of it came back and a lot of the money in the Savings Bank is money of not very sophisticated investors who perhaps have got worries about putting it in the hands of financial experts or investing it in unit trusts or in stock exchange instruments or whatever and they think, quite rightly, that the Gibraltar Savings Bank which has got a copper bottom guarantee in its constitution in that the interest and the capital is 100 per cent guaranteed by the Gibraltar Government is a safe haven but we believe that the interest that those depositors should get should be an attractive rate of interest, we believe that they tend to be small investors with unsophisticated – not all, there may be a few investors with large sums of money but by and large I think a lot of the people who finish up getting gratuities from the Government put the money straight in and the money never leaves the Treasury, it just moves from being a lump sum payment to a retiring civil servant to being a debenture or a deposit in the Savings Bank. Therefore to the extent that the improvement in Government revenue, from this particular source which is now going up to £2.5 million from £1.8 million, it is an increase of £700,000, is the fact that the differential has been widened and that the interest rates have been lowered. We feel that this is the wrong policy and that in the

light of other statements being made in helping different sectors then it is in the interest of the pensioner sector and in the interest of the Government, we believe, that the Savings Bank should continue to be the home for a lot of the pensioner savings and that therefore it should be able to hold its position in the market and the recent interest rates are not indicative of that. If, in fact, the rates do not retain their competitiveness then it is quite obvious that the estimates will not materialise because sooner or later people will start – I do not suppose there is a tendency because there tends to be a certain inertia in these things and once one puts money in an institution one tends not to withdraw it even if the rates drop but certainly the Government may well find that the natural turnover of the bank in that new deposits come in as others are redeemed may not happen if the rate is not able to maintain a position, in fact, where previously I think it was, if anything, slightly above the going rate in the market and I believe it is now below from the figures that I have seen gazetted.

Moving on, Mr Speaker, to the statement that was made as to the indications that there are of what is happening in the economy and the extent to which the figures in the estimates of expenditure are a reflection of the performance of the economy. Let me say, as I said in last year's estimates when the question of the calculation of GDP came up, the GDP calculations in Gibraltar have been made always, as far as I am aware, on the basis of the classification in the blue book on national accounts in the United Kingdom. Whether that classification is as accurate when one tries to reduce it to the economy of a town as opposed to the economy of a nation, but certainly the GDP of everybody is based on the same method of calculation and there is no other way that I know that anybody else has devised anywhere else of calculating GDP other than using that instrument. In the case of the calculations in Gibraltar, certainly the income seems to be a more reliable method than the expenditure side and there tends to be a discrepancy between the figures produced by the two methods of calculation, the income method and the expenditure method. But now we have no calculation of GDP and therefore what do we have to go on to get an assessment of what is happening in the economy as a whole and to what extent what is happening in the

budget of the Government is a reflection of what is happening in the economy. Well, Mr Speaker, I said earlier on in my introduction that it seemed to me that on more than one occasion the answers to the questions that we put in this House are given as if somebody was writing the answer and the Minister was standing up and reading it without having looked at it before he comes here and without, if one likes, making a judgement of how realistic is the answer that has been prepared and how accurate it can be. In Question No.237 of 1999, I asked, "What is the number of employees in the public and private sectors in October 1997 and April 1998?" and I was told by the Chief Minister, "The information sought would normally be available when the Employment Surveys are published but the information is collected as raw data by the Income Tax Office and passed by them for analysis and used by the Statistics Office". Therefore the information that we had was the raw data. However much analysis one applies to the raw data, what is clear is that the raw data could not possibly be correct, the raw data we were given, and it should have been obvious I think to the Chief Minister that they could not possibly be correct because it would be very bad news indeed if it was correct. The figures we were given was that in April 1998 the total full-time employment in the public sector was 2,744 and in the private sector was 7,187 making a total of full-time workers of 9,900 and the figure for part-time workers came to 133 and 1,346 public and private making a total of 1,479 and that produced a total workforce for Gibraltar of 11,410 full-time and part-time. The comparable figure in April 1997 is 13,000; that would have meant that in the last 12 months we had lost 1,600 jobs in the economy; that could not possibly be right and no amount of analysis, I put it to the House, can convert 11,400 jobs into 13,000 jobs. If anything, one would have thought raw data would be more than refined data and that the raw data might lead to some removal of numbers because there might be double counting. When we get the answer in the House obviously on the surface, it looks okay, it is only when it is compared with statistics provided previously that the anomalies begin to show and I do not know on what basis the Government feel that the private sector is doing well but I can tell the Government that on the basis of the answer of Question No.237, that there are 8,500 jobs in total in

the private sector, it means a loss of 400 jobs net in 1997/98 and this is to April 1998. At the same time in respect of 1998 we were told by the Minister for Employment, in January, that the figures that he had just published on vacancies opened and filled during 1998 were very encouraging and that they show a significant increase in the number of new jobs being created in the economy. Well, if we have a significant increase in the number of new jobs being created in the economy in 1998 and we have, in answer to Question No.237 a decline up to April 1998, it must have happened post-April 1998 and that is impossible because to have gone from that figure back to above the previous figure, all the indicators in fact are that there is very little movement overall and within that very little movement overall, it can only mean that to the extent that there has been new jobs created in new industries, like the one that was mentioned by Victor Chandler; let me say that in fact that which started off some years ago with Ladbrokes moving their operation from Brussels to Gibraltar and the publicity that has been given to the advantages that Gibraltar has for the gaming betting industry by being able to use a VAT free base and a tax free base where there is no betting tax. If that indeed creates, and we hope that it will, but if that creates a flow of newcomers into the economy creating white collar jobs and making demands on the telephone system and on all the infrastructure that we had the foresight and the wisdom to provide in previous years so that it is all there now to be used, if that happens then that is fine but then all the new units and all the new ministries are in the wrong business. What we need to have is a Minister for Gambling going round getting betting shops to come to Gibraltar because that is where the growth is happening. Then the two pillars of the economy would become the gambling and the exports which is producing £5 million of import duty and we can all have the high moral ground of how well provided we are. Mr Speaker, I hope the Government will have an opportunity to go back and look again at the figures in Question No.237 because, in fact, we are naturally assuming that the answer that was given was incorrect because we do not believe that there has been a huge decline in the number of jobs and particularly because, in fact, the decline in these figures is more in the public sector than in the private sector which is very peculiar when one thinks of it.

One would have thought, Mr Speaker, that by the 31st January 1999 the Government would know how many people they had in employment in October 1997 but here we have a figure that says the public sector in October 1997 employed 2,901 persons and the public sector in October 1996, a year earlier, employed 3,996. So here we have a loss, according to this information, between October 1996 and October 1997 of 1,000 public sector jobs; that cannot possibly be correct. But it is not as if we were asking information in October 1997 or in November 1997, the information was being provided in January 1999 about October 1997 and it is not as if it was something that suffered from the lack of response of employers because we are talking about the public sector and the biggest component of the public sector is the Government themselves and the Government themselves employ more than 2,900 people. So either they have left the MOD totally out or some other peculiar explanation for this but it is really incomprehensible that based on PAYE returns in January 1999 there should still be an absence of information about Government public sector employees in October 1997 and April 1998. The figure for the private sector, Mr Speaker, which was given as 8,300 in October 1997 and 8,500 in April 1998, compares with the figures in the preceding financial year which were published in August 1998 and which referred to October 1996 and April 1997 and the comparable figures there are 8,979 and 8,967. So what we have is that in the first year of the present administration, in 1996/97, the only Employment Survey that has been published so far indicates that in fact there were on two specific dates 8,979 and 8,967 persons in employment in respect of which PAYE payments had been made. That difference of 30 in almost 9,000 is not a significant difference, it has no statistical significance, 30 up or 30 down. What it indicates is that whatever changes may have been taking place within the 9,000 jobs in the private sector, if there were more jobs in one area there were less jobs in another area but the total was, give or take a few dozen jobs, we are talking about 1996/97 – 9,000 jobs in the private sector. If we look, Mr Speaker, at the PAYE returns for the private sector, that is consistent with that level and if we look, not at the open contracts which has been given by the ETB because I think at the last meeting of the House the Minister for Employment mentioned

the figure of 14,000 open contracts at the end of March and the fact that on a previous date, sometime in 1998 a figure of 17,000 had been given but I think throughout it is being recognised, and that is what at least one section of the new law is supposed to cure is that employers have not bothered to inform the ETB when people have left their employment and consequently the open contract figure necessarily is on the high side. This is why when we look at the number of jobs that were filled in 1998, Mr Speaker, given that 4,021 were filled and 3,600 were cancelled and given that the cancellations is by everybody's recognition not 100 per cent, what we are likely to see, I put it to the Minister, when the system is working as it should he will find that that gap is not there so even if he is getting 4,000 jobs cancelled and 4,000 jobs filled, it does not mean an expansion in the number of jobs in the economy. We wish it were, it would be something to celebrate for all of us because, after all, Mr Speaker, irrespective of who takes the political credit for it, at the end of the day if the beneficiaries are going to be Gibraltarians who would otherwise be unemployed then the House should be happy with that result but regrettably the figures do not justify that analysis.

If we look, indeed, Mr Speaker, at the estimates for this year and we look at the figure that has been put in terms of the income of the Employment and Training Board from the training levy, again other than this last minute addition of £60,000 which would represent 20,000 man weeks at £3 per head..... *[Interruption]* If we look at the figure on page 114 of the estimates, Mr Speaker, we see that the actual amount collected in 1997/98 was £1.2 million and that the estimate for 1998/99 was £1.8 million. The estimate is 50 per cent higher than the figure for the previous year and, of course, the levy went up by 50 per cent so what therefore that indicates is that there was no expectation of an increase in the levy from more people being employed and the outturn confirms that. If we actually divide that figure by the £156 a year levy, which is what a man year represents, then we will see that we come up with a figure of something like 11,800 jobs. In fact, there are, according to the Employment Surveys, some 13,000 employees so we do not see that the ETB figures are indicative indeed of any growth at all in the employment market so if we look

at the ETB figures; if we look at the PAYE figures; if we look at the numbers given in answer to questions, they all indicate one thing; the only discrepancy between all those statistics and the one figure that appears to be higher is the number of unexpired contracts and the number of unexpired contracts, if the new provisions in the law work, I put it to the Government will now come down to this figure which is confirmed in every other source. Consequently, regrettably, the optimism of the Chief Minister that the revenue figures were indicative of a sound private sector indicating some kind of growth is simply not substantiated by facts. In last year's estimates the Chief Minister finished his contribution in the House by saying that the policy of the Government was to continue to have small steady growth in the private sector as if small growth was somehow better or more reliable than fast growth, a view we do not share but the fact is that there is no small growth or if it is so small, is so small as to be almost invisible. Clearly in an economy such as ours we agree entirely with the view that our economy, by its very nature, is an open one and one that needs to be responding to new parameters, new competitive pressures, new rules that other people make which may suit them but not suit us, there is no choice. Of course, Mr Speaker, everything that we have been doing in Gibraltar since the position of the British Government became clear in 1984 with the closure of the Naval Dockyard has been precisely to readjust our economy. It was started in 1985 on the bulk of huge sums of money provided by the British Government which mainly finished back in UK and with lots of experts from UK whose best qualification at being experts seemed to be that they made recommendations which benefited them more than they benefited Gibraltar and we completed that exercise with our own efforts between 1988 and 1996 and it is the result of those efforts; if the Government are now able to say, "We have got a state of the art telecommunications" it was because that required an effort in 1989 without which we would not have a state of the art telecommunication and if we did not have it Victor Chandler would not be here. Therefore all those things that needed to be done, needed to be done first and if they had not been done they would not be able to take the credit for anything that is happening now and if we had not filled in the land in

Montagu Basin the Government would not be able to worry about people getting drowned by bathing in an area where there is a sign that says one should not go down the steps and bathe because the Montagu Bathing Pavilion would still be there and people would still be paying one shilling and sixpence and we would not have any of the developments that we have there. We did, at the time, what needed to be done and now our job is, Mr Speaker, to question how efficiently those assets are being put to use because that is what is taking place now. There are no new assets being created. Putting a lot of potted plants on promenades that exist because the land was reclaimed is not in the same category as reclaiming land and there is one fundamental difference; that the land that was reclaimed that was not sold previously is still there to be sold and if it is sold now it comes in as land sales in the Improvement and Development Fund for which there are substantial amounts shown in the estimates. The estimates show the contribution to continuing development in our capital expenditure from the sale of land and the creation of a land bank and the placing of land from that land back into the market was an important part of the long-term economic strategy and economic management of the direction in which Gibraltar had to go whenever there were opportunities for investment and investors came in and wanted to have flat land that could be developed; not land at 90 degrees which was the only thing the MOD ever got rid of in which one had to be a steeplejack to build anything and that flat land was not there. Now that the land is there, there is no reason why if the Government decide that they should embellish those areas they should not go ahead and do it but let us not forget that the difference between the two is that the embellishment makes the place more attractive for those who are here and those who visit us, as the Government have said quite correctly, but it is an embellishment which is not per se revenue generating; it is an embellishment which requires then subsequent sums on it to keep it up to standard. Therefore these are not the creation of assets out of the capital account in the way that putting up an industrial park is an asset. If the Government think it is an asset, well I can assure the Government that if they believe that all one had to do was plant a few palm trees to get the place flooded with tourists spending vast amounts

of money, everybody else would have been doing that well before us. [HON CHIEF MINISTER: *But they did except that they did not lose 10 years.*] Well, Mr Speaker, I do not believe that they did and certainly it could not have been done 10 years ago because there was water and all the flats would be waterlogged in salt water 10 years ago. At one stage I was trying to see if we could import plants from Israel that survived in salt water in order to cut down on the expenditure of watering the plants but it did not work.

The amounts of money that have been put in the Improvement and Development Fund this year, I think, in the original estimates in 1997/98 the Government accepted that their expectations, with the benefit of hindsight, were not going to be fulfilled. We have seen that, in fact, again this year, there has been less money spent than had been provided but I think one particular concern is that when we look at the revenue side in terms of receipts in the Improvement and Development Fund, we see that the amounts coming in from the Konver and the Interreg and the Objective 2 seems to be very low. Perhaps the Minister for Trade and Industry when he speaks would put our minds at ease on this particular aspect. We have a position where on the Improvement and Development Fund, Mr Speaker, the estimates indicate that on Interreg the figure estimated on the expenditure side was £450,000 and the forecast is £250,000 and there is an estimate for this year of £305,000; on Konver projects we had an original estimate of £2 million in 1998/99; we have a forecast outturn of £600,000 which is an underspending of £1.4 million – this is on page 112 of the estimates. We would have expected, if there has been an underspending which can happen because the date is an arbitrary one, bills can come in after the 1st April, but if there is an underspending in the year that has just ended of £1.4 million why is it that in this coming year we are only providing for £50,000? One would have expected that the balance to complete the £2 million would be in this year and if it is not in this year why is there nothing in the final column which says, “Balance to complete”? How is it that we started off in 1998 with the expectation of spending £2 million of Konver projects and we have finished up in the expectation of spending £650,000?

HON CHIEF MINISTER:

Mr Speaker, if the hon Member will give way. Just so that he can better understand the position. One of the changes to the presentation of the Improvement and Development Fund is that expenditure now appears in the Head where it naturally belongs rather than putting everything which is EU funded in Head 106 simply because it is partly EU funded. So many of the projects which have nothing to do with the Department of Trade and Industry, which used to appear here on Head 106, simply because that is where the EU funding Head was, have now been spread about the other Heads in the Improvement and Development Fund where they naturally belong. I would be very happy at the Committee Stage to give the hon Member a detailed list of where they have gone to from that Head 106. But I can assure the hon Member that the Konver allocation is earmarked to be spent in its entirety before the funds run out.

HON J J BOSSANO:

Well, Mr Speaker, I am glad to hear that. If I turn to page 104 which shows not the spending of the money but the receipt of the money, in fact, I assume from the answer that we have been given that even if the spending is distributed amongst a number of Heads the income will all be in the one Head and in the one Head what we have is that having anticipated a year ago that they would be receiving £500,000, notwithstanding the fact that they have spent £600,000 they have only received £177,000 and that in the forthcoming year they are expecting to receive another £500,000 and that makes a total of £677,000 because in the column which says, “Actual 1997/98” there is a zero so it means that out of the £2 million Konver to date, irrespective of how much we have spent, we have only actually received £177,000. I would also like confirmation, in fact, Mr Speaker, that the amount that is shown as spending is the total amount, I take it, and not the EU proportion of the amount so that in fact if a project is shown as costing £600,000 that is the cost of the project on the expenditure side but only a share of that will be coming from the Konver funding.

HON CHIEF MINISTER:

If the hon Member will give way. That is precisely the reason underlying the change in presentation. In other words, that when everything was shown under the Department of Trade and Industry on the expenditure side, it was very difficult for the House to actually assess the real cost of the project because everything was just parked under something labelled "EU grant – Konver". So the hon Member is entirely right, the receipts is the element of EU funding which we expect to receive during this financial year but the expenditure Heads reflect the full cost of the project or at least as much of the cost of the project as is intended to be incurred during this year. The hon Member expressed an element of surprise that there was only £500,000 in terms of revenue on the EU Konver projects, I would ask him to cast his mind back to a discussion that we had, I think, at the last Question Time on the fact that our obligation is not to spend it this year but to commit them this year and therefore that is a reflection of what we think we will get this year on the basis of expenditure as opposed to commitment. Everything will be committed on time, it has been committed on time but in terms of actual expenditure by the 31st March next year we do not think that on the Konver projects we will get the other figure.

HON J J BOSSANO:

Mr Speaker, on the amount that we have got coming into the Government for the coinage, there appears to have been a lower level on the income side than was anticipated. I note that the issue of circulating coins in 1998/99 is £727,000 but it goes down to under £600,000 in the year that we entering into. I would have thought that when we are talking about circulating coins the estimates should, for one year to the next, follow what is currently happening and therefore I would like to have an explanation as to why it is that they are expecting a drop in the number of Gibraltar coins that will be put into circulation in the next 12 months as compared to the last 12 months. In the first part of the estimates, when the figures are shown on the royalty payments from Pobjoy,

we also have a peculiar fluctuation in that the 1997/98 figure is almost £93,000; they assumed it would go up to £120,000 – this is on page 13 – and we have finished with a figure of £67,000 and for the next year we have commemorative coins £54,000 and royalties £100,000 and the £54,000, in fact, is a new item which was not there previously, one can only assume, well there is a footnote saying it was in the Post Office before, but can I ask, in fact, Mr Speaker, how come that having expected that the royalties of coins would show quite a significant improvement from £93,000 to £120,000 we finished up with £67,000 and now we are expecting again to go up to £100,000?

On the Social Assistance Fund, we have of course this year, as was the case last year, the whole amount being funded from the Consolidated Fund, that is to say, it was only in 1997/98 that the Government provided less money because there was already a reserve there. I see that the forecast outturn shows that there has been a balance brought forward of £477,000 which then went down to £281,000 and this year the Government are budgeting on the basis that the balance in the account would be only £11,000. I appreciate that there is nothing to stop more money being put in during the course of the year, if needed, by either virement or from the supplementary funding head but I would have thought, given the very nature of the Social Assistance Fund, it would be wiser to keep, if one likes, a float not as tight as the £11,000 shown and that, in fact, is what was previously being done. It is one of those funds where the Government kept a more substantial sum of money because, frankly, if one is budgeting so tightly that the balance between the predicted expenditure and the income is £11,000, it would not require much of a social problem which would need discretionary payments that are made from this fund for that money to be used up very quickly. I would have thought it would be wiser to keep it more in line with what has been the case before and we see that in the balances carried forward in previous years were £476,000 in 1997/98; it was estimated at £100,000 in 1998/99 and it finished up being £281,000 and this year we are only estimating £11,000. I would also seek confirmation that the changes that are being announced in terms of the payment of Family Support Benefit which is going

to have the name changed, presumably that is still being funded from the provision on page 119 of £740,000 for Family Support Benefits. Whatever the effect of the changes may be it appears from these estimates that they are not expected to cost anything because there is certainly no indication here that the changes are going to produce a cost to the Government since a year ago they provided £750,000 they have actually spent £740,000 and they are providing £740,000 this year and if indeed they are going to spend more than £740,000 as a result of the changes, then I put it to them that the comments I have just made about the narrowness of the margin of £11,000, that takes care of the £11,000 if there is any cost involved.

Mr Speaker, in summarising, let me say that as I have always tended to do, I have sought to look at the estimates on the basis of the information that is being provided here and on the basis of the information that we have been gathering throughout the year as a result of questions in order to put together a picture which will enable us to make a judgement on what is the state of the position of the public finances in terms of the obligations that there are to be met in our community and in terms of the ability with which we can face the future with confidence.

The level of activity in the private sector reflected in this and indeed I remember that last year, Mr Speaker, I wondered how it was that the private sector was having such difficulties in the line of the growth that was taking place in imports and then it turned out that the growth was not taking place in imports because the figures we had been provided were incorrect and the Government, strangely enough, only discovered that they were incorrect as a result of us putting a question subsequently referring to the previous incorrect figures. Certainly our judgement, based on the information available, is that to the extent that that information is accurate, then it shows that the private sector has replaced some activities by others in terms of employment but that its profitability is, if anything, marginally lower now than it was in the tax year 1995/96 based on questions provided by the Government as to assessments made for 1994/95, 1995/96, 1997/98. In those years we have seen that

there is a difference but that the difference is not very big. So, first of all, it is not true, as was suggested at the time, that the amount that was being collected was because of a huge amount of back-payments bunching up, this is not true, this happened the year that £15 million were collected in income tax and not subsequently; that the £11.5 million that is being collected this year is in fact very close to the figure that has been there since 1994/95 and 1995/96 which is, of course, considerably more than it was in 1988/89 when it was a level of £2.5 million. So what we have is a situation where the taxable profits of the private sector have gone from a quantum which produced under £3 million of company tax a year to a quantum which produces three times that much, £9.5 million to £10 million, that the Government are collecting about £11 million a year because they are still collecting some arrears but that, in fact, if they are collecting less on what is due this year they are more or less balancing it by the collection of arrears and that that is true in a number of areas except in PAYE. In PAYE, Mr Speaker, there is a masking and therefore when the Government put an interpretation on their own figures in the statement that the Chief Minister read out which contained, unusually for him, a lot of statistics this year, and then he starts to call people all sorts of names, he enjoys doing that..... [*HON CHIEF MINISTER: Does he not remember when he was sitting here and I was sitting there?*] Mr Speaker, when I was sitting there and he was sitting here, what I do remember is that I never started the name-calling and when I am sitting here and he is sitting there, what I remember is that it is still happening.

MR SPEAKER;

But you do not remember what I said at the very beginning?

HON J J BOSSANO:

I do as well, I am not calling him any names, Mr Speaker, you said nothing about referring to name-calling, you said we should not call each other names and I am not calling him names, I am simply recalling that we have done it, that is all. I am pointing out that it gives me no pleasure, it seems to give him one, and I

certainly think it is better for the House and better for Gibraltar that we should not touch on it, quite independent of the fact that the Rules prohibit it, Mr Speaker.

MR SPEAKER:

Only the Speaker gets the credit for that. Carry on.

HON J J BOSSANO:

Yes, Mr Speaker, I am quite happy to give you the credit for reminding us that those are the Rules and that we should stick to them.

Therefore, Mr Speaker, the Chief Minister is wrong, I am not saying he is lying, I am saying he is wrong.... *[Interruption]* Mr Speaker, I am the only one to lie in this House, we are not supposed to say that we lie, we are supposed to say we are economical with the truth, I think is the phrase in parliamentary language. I am not allowed to call him a hypocrite but I am allowed to say he is hypocritical, then all I can say is that if he says that I am the only one who lies in this House, he is being hypocritical. *[Interruption]* I see, Mr Speaker, the important difference is not to get caught, now I understand him. Now I understand what the moral high ground means, it means one can engage in the most heinous crime, the one crime one must not commit is to get caught. That is the professional sort.

HON CHIEF MINISTER:

He is the only man on whom it has been proved, everybody else it is just his allegations.

HON J J BOSSANO:

Well, I suppose, if I went round taping other people's conversations I might have lots of proof about what other people get up to but it is not a habit I indulge in, Mr Speaker.

MR SPEAKER:

Are you finishing now?

HON J J BOSSANO:

I am rounding up, Mr Speaker, if he would let me. He has got lots of other opportunities but he cannot resist it, he has to jump in.

Mr Speaker, therefore he is wrong in deducing from the figures that he gave earlier in his contribution, that the fact that there is a £47 million collection of tax shows buoyancy in the economy in terms of the tax yield reflecting levels of incomes because the figures that he has given in answers to questions in the House indicate that one of the things that is happening within the global figure that is shown in the estimates is that there are two factors. One is that there is a greater proportion of collection on time and that is not an indication of higher incomes, that is clearly evident in the trend over the last three years if he measures, as I have done, the answers that he has given which show the percentage of tax collected in the year due. And the other factor is that in each year the proportion, coming from the private sector is lower. Those two elements in the figure are part of the analysis we have made and therefore, regrettably, that analysis does not allow us to come to the conclusion that he has come to and we have to say we believe that that conclusion is incorrect. It would be better if in fact the figure that we have before us were showing ballooning incomes and if it meant that the fact that people are paying £47 million is a reflection of the fact that they have made huge increases in earnings which allows them to pay £2 million as a percentage of those earnings because that would be an indication of the buoyancy and the prosperity which, regrettably, there is no evidence of in any of the elements in the estimates and more particularly in all the questions since the last estimates all of which have been questions which are there for one purpose and that is to put pieces of the jigsaw together in order to complete a picture. As I said at the beginning, there is clearly one element in the economy which is new and which appears to have very high prospects which is the operation of Victor Chandler which the

Chief Minister mentioned and which I am glad to see is being welcomed and encouraged by the Government because it seems as if that could lead to other people following and that would mean that we would then have a new source of revenue; one that is not susceptible to the machinations of our neighbour, I do not know to what extent that might be affected by the ideas in the European Union on harmonisation but from what I have seen so far, betting does not seem to be on their hit list yet, maybe we should not draw too much attention to our success in that area then otherwise it might join the hit list. Certainly it is quite obvious, Mr Speaker, that the vulnerability of the sector, in terms of tax advantages, whether we are talking about that operation or any other operation, is one which is in the gun sites of the Spanish Government and certainly the last meeting that took place in May of the Finance ECOFIN under "Any other business" there was a submission by the Spanish Government on combating tax fraud and it is something that I hope the Government are investigating just in case it so happens that we feature somewhere in that document which, of course, would not catch any of us by surprise.

Mr Speaker, one other thing that the Chief Minister, I hope will have an opportunity to refer to when he answers, is this question of the alleged report that has been made by the Chambers of Guy Stagnetto for the Government, obviously if it is a report for the Government we would want to know where in the estimates is the provision to pay for it so that we can see what it has cost and to see whether it happens to be value for money. Let me say that, as far as we are concerned, if there is merit in engaging somebody to make an evaluation, the Government have said that they are going to bring in consultants to do an Input/Output Study and to look at all the sectors and their prospects and interlink between the different bits of the economy, it is quite obvious that the political risk assessment because of the attitude of the Government of the Kingdom of Spain is something that is difficult to quantify but something that is part of the equation and I think that there is a debate which is genuine and legitimate as to how we assess the threat that that poses for us all in Gibraltar and how we combat it. In what forum that can be done? How it is done? Whether somebody should put a paper that enables us to

study it, is a different issue but I think that the fact that somebody does an exercise of that nature is less reprehensible than the fact that one should learn about it by leaks in the Spanish press. That, I think, is what is completely unacceptable.

HON CHIEF MINISTER:

If the hon Member would give way. Mr Speaker, as always, well perhaps not as always, but as is getting increasingly commonplace, Opposition Members make all sorts of public statements including now statements in this House on the basis of accepting at face value what they read in the right-wing Spanish press. I would have thought it was legitimate for the hon Member to stand up and ask me or he could have asked me over tea or he could have phoned me this morning to say, "Chief Minister, is there any truth in what I have read in the ABC newspaper?" But what I think is completely illegitimate is for the hon Member not to bother to find out whether it is accurate and then make public statements which not only assumes that it is accurate but then goes onto castigate the Government for not revealing to the House and for having to find out from leaks in the Spanish press which itself assumes that the leak is true. I do not know if the Leader of the Opposition has found a new ally in the pro-PP Government mouthpiece which is what the ABC newspaper is. He obviously has not heard the 1.30 pm news on GBC radio which I would have thought was more relevant than reading the Sunday Spanish press. If he had heard the news broadcast at lunch time today on his own radio station and paid less attention to the right-wing Spanish Sunday press he would have discovered that there is no truth in the statement in the ABC newspaper that the Government have commissioned a report from Mr Stagnetto or from anybody else and therefore everything that he went on to say about having to find out about these things through Spanish press leaks are entirely without foundation.

HON J J BOSSANO:

Mr Speaker, I am not surprised that the microphone keeps on packing up on his side, it is understandable, if I were a microphone I would be doing the same thing.

It is quite obvious that giving way to the Chief Minister in the expectation that he will behave in a civilised way, I ought to have learnt by now that it is not going to materialise. I have asked a perfectly legitimate question, I have not made any accusations. *[HON CHIEF MINISTER: Yes, he has.]* I have not hectorred or lectured and he cannot help it, he has got to stand up and go on the attack.

HON CHIEF MINISTER:

On a point of order, Mr Speaker.

HON J J BOSSANO:

What is the point of order?

HON CHIEF MINISTER:

Yes, the point of order is not for the hon Member to adjudicate, it is for the Speaker.

HON J J BOSSANO:

Well, Mr Speaker, it is for you to adjudicate whether I sit down or I stand up.

HON CHIEF MINISTER:

No, on a point of order the hon Member must sit down, if Mr Speaker wishes to hear it.

MR SPEAKER:

Whether it is a point of order or not.

HON CHIEF MINISTER:

Mr Speaker, on a point of order. The hon Gentleman is responsible for the accuracy of the statements that he makes in this House. He cannot stand up there now and say that he has asked a civilised question and not made any insinuations because the fact that caused me to rise to my feet was precisely the fact that he was lamenting the fact that he had had to discover this through leaks in the Spanish press and that the Government had not come clean about it. That is not asking a civilised question, Mr Speaker, that is an insinuation which is inconsistent with the factual assertion that he has just made.

MR SPEAKER:

The thing is this, you cannot ask whether a report in a newspaper is true.

HON J J BOSSANO:

I have not. I gave way to the Chief Minister because he asked me to give way and I gave way to him because presumably he wanted to volunteer something that he knows that I do not, it seems he does not know anymore than I do. These were my words, Mr Speaker, and all we need to do is to rewind the tape and we can hear them again, and I said, "If somebody wants to do a report on the Constitution or on the dangers for Gibraltar of the attitude of the Spanish Government that is less reprehensible than that one should find that out by reading the Spanish press". Now, Mr Speaker, there is a saying in Spanish which has to do with a certain part of the anatomy catching fire which I will not repeat and therefore all I can say is that if he jumps in such a defensive mood.....

HON CHIEF MINISTER:

But you see, Mr Speaker, there is another Spanish saying which refers to fish and fowls and by what the hon Member has just said he is admitting the very point that I was complaining about which is that he was making an insinuation and having been caught out he then tries to pretend that he was not.

HON J J BOSSANO:

I have not given way. On a point of order, he is completely out of order, Mr Speaker.

Well, Mr Speaker, what I have said is that that was not what I said originally.

MR SPEAKER:

No, but what you meant is that this had been done.

HON J J BOSSANO:

No, Mr Speaker, the point that I am making is that if it is true that such a report exists – and I do not know whether it is true or not..... *[HON CHIEF MINISTER: Then it would have been better.]* Then it would have been better that we should have got it and not from ABC. The problem with the Chief Minister is that since..... *[HON CHIEF MINISTER: He wants to get away with it.]* No, nobody wants to get away with anything, Mr Speaker. We are fortunate in Gibraltar that the Prosecuting Counsel is not jury and judge otherwise every time any of us question the minutest atom in the molecules of his brain as being anything other than total perfection, we would stand condemned. The Moorish Castle would be overflowing with people. *[HON CHIEF MINISTER: Only when they do it dishonestly.]*

MR SPEAKER:

Order, order. Carry on with the estimates.

HON J J BOSSANO:

I am trying to carry on, Mr Speaker, but he does not let me. It is quite obvious that he is the most unruly Member of this House who you cannot shut up, that is quite obvious.

MR SPEAKER:

I do and he obeys.

HON J J BOSSANO:

In any other context he would be a hooligan but in this House he cannot be because that is not allowed by the Rules.

MR SPEAKER:

Do not tempt me.

HON J J BOSSANO:

Let me put the Chief Minister's mind at rest because he gets very agitated and that is not going to do his health any good. What I was saying, Mr Speaker, is that if Mr Stagnetto says he did not do it for the Chief Minister or the Chief Minister did not commission it, which is what the report said on GBC, well I am not questioning whether it was commissioned or was not commissioned. I am saying if it exists then what is more reprehensible is not that it should exist but that we should not know that it exists because it has been made available here or because we have been told about it here. We should not find out these things at second hand. If it does not exist, it does not exist. My understanding is that the report on GBC was one in which Mr Stagnetto denied that he had made any report for the benefit of the Government of Gibraltar commissioned by the Government of Gibraltar and therefore, to that extent, what I said initially was that if, in fact, there had been such a report commissioned then when the Chief Minister had his right of reply – that is all I said – we would want to be pointed to

where the money was for that report. And I was also making a general point, Mr Speaker, because of course if we are talking about the political threat to Gibraltar by Spain and our ability in Gibraltar to survive irrespective of Spain's hostility, and these are important considerations, they are important considerations in when we are looking at a Government that spend £10 million a month. Is it not a perfectly legitimate position to say to ourselves, "We are so confident that we are invulnerable to Spanish machinations that we are able to project that our economy is so robust, that notwithstanding two hour queues, notwithstanding their campaign against us in the EEC, we can in fact be confident that we will generate money to meet £10 million a month of expenditure, to keep on bringing consultants and experts" as if we were the most complex society in the Western hemisphere that needs to be constantly analysed by people and on top of that the Government feel that even though they are not putting any money into Community Care when the time comes that they need the money there will be no problem in meeting it and the Government are confident that notwithstanding the fact that they are not putting any money aside for repayment debt, when the time comes they will be able to repay the public debt. All those considerations, it so happens, that because this report has come out.....

MR SPEAKER:

I am sorry, I now rule as a fact no more reference to the report.

HON J J BOSSANO:

Well, Mr Speaker, if you now rule that then I will make no more reference to the report.

MR SPEAKER:

Or Mr Stagnetto.

HON J J BOSSANO:

Or Mr Stagnetto. Irrespective of that, Mr Speaker, what I am saying is that implicit in our judgement of the wisdom of the decisions that the House is taking in committing itself to expenditure must be an element of evaluation of what is our strength in resisting a Spanish campaign against us and that debate is a debate which we feel is legitimate to indulge in but it is perhaps necessary to consider how and in what circumstances and under what parameters we do it but certainly if we want to secure the long-term future of our country and the viability of our economy and nothing in this budget is doing anything other than spending the money that is coming in with the Government not even being sure how it is coming in except that there is so much of it coming in that they feel they can spend it. Of course, the same could have been done in the past and if the same had been done in the past the resources would not have been there.

The House recessed at 6.40 pm.

WEDNESDAY 2ND JUNE, 1999

The House resumed at 9.35 am.

**Debate continued on the Appropriation (1999-2000)
Ordinance, 1999**

MR SPEAKER:

We will continue with the Second Reading of the Bill.

HON J J HOLLIDAY:

Mr Speaker, as Minister with responsibility for Tourism and Transport, I would like to comment on aspects of the complement of the Ministry for Tourism and Transport, which is Head 6, and then on the expenditure in respect of Other Charges and on the Improvement and Development Fund expenditure and finally on Revenue.

The most significant change would appear to be an increase in the complement of the Traffic Department, from 15 persons to 23 persons. Those members of the Licensing Department who previously came under the control of the Accountant General have now been incorporated into the Traffic Department. I believe that this is a logical move, as now both the clerical and technical staff of the Licensing Department and the Motor Vehicle Test Centre come under the one roof.

The other matter I would like to highlight in respect of staffing relates to staff services under the Gibraltar Development Corporation. The complement is being increased by two permanent Visitor Information Patrol Officers, who will be supplemented during the summer months by an additional three officers. This will allow the Gibraltar Tourist Board to improve the range of information services which it can offer to visitors. Provision is being made for this under Subhead 13, Tourism Information Services.

In addition, there is provision for Temporary Assistance for the Tourist Board in order to introduce a History Alive scheme of costume re-enactments of events. The purpose behind the introduction of this scheme is to keep those visitors who come to Gibraltar on day-trips for a longer period of time. It will also add a certain amount of visual activity to the city centre.

Obviously, when the new Coach Terminal is finished, there will be an assessment carried out of staffing needs to ensure the proper operation of this important visitor entry point. In addition, an

Information Office will be established in the Terminal manned by Tourist Board personnel.

In respect of Head 6C, Transport, the salaries bill last year was less than expected because there were vacant posts for part of the year on the department's complement. Insofar as Industrial Wages is concerned, the cost is being contained at about the same level as last year.

Mr Speaker, the Government will be seeking to address all issues in relation to the manning of the Roads Department during the course of this financial year. There has already been a partial restructure of the Department at management level. It is envisaged that negotiations with the Staff Association concerned will bring about the planned restructure of the industrial complement of the Department. The policy of the Government is to guarantee the long-term employment of the workforce in this Department. However, there also has to be value for money, and the work programme must achieve the targets set by Government. This will mean that certain major jobs will be put out to tender and will be done at the same time as the in-house labour force address their programme of works and maintenance. I will have more to say on this matter shortly.

The final matter which I wish to highlight in respect of Personal Emoluments is that the pay review for non-industrials has resulted in higher costs in respect of salaries, and I attribute the increased expenditure throughout Head 6 primarily to this.

Under Other Charges – Tourism, before I analyse Head 6A, Tourism, I would like to set out the Government's policy in relation to tourism. There are four principal markets which the Government are seeking to develop. They are the short-break market; cruise ship and yacht visitors; the day-tripper market and the conference and incentive market. The first of these markets is a relatively new product, which reflects changes in demands for holidays from the UK market, which continues to be our principal catchment area. The last of the four categories is a totally new area for Gibraltar. Although there has been lip service in the past

to promoting Gibraltar as a conference destination, the truth of the matter is that the facilities available here until recently have not been adequate to cater for the demands of conference organisers.

The policy of Government is to widen the appeal of Gibraltar beyond the British market and to create a significant demand for Gibraltar holidays in Spain. It is for this purpose that a Tourist Office was opened in Madrid in January 1999. There will be a concerted campaign over the next few months to raise the profile of Gibraltar as a holiday destination in Spain. This campaign will include features and advertisements in journals and adverts on billboards. The recent visit by Spanish journalists needs to be seen in the context of this marketing drive aimed at the Spanish market.

This does not mean that the British market is to be neglected. Following the top Travel Press visit in April 1999, Gibraltar will act as host for the CARTA Conference in June 1999. CARTA represents independent travel agents and tour operators in the UK, and their presence in Gibraltar is therefore an excellent vehicle for promoting the many niche markets where Gibraltar can do well. Later on this year, Gibraltar also hopes to attract the annual conference of the Institute of Journalists. These are all high-profile events.

Mr Speaker, the Government have dedicated much effort in building up the tourism industry in Gibraltar. Considerable success has been achieved, as reflected by the visitor arrival statistics. There were over 6.5 million visitor arrivals through the land frontier in May 1998 compared with 5.8 million in 1997. These figures can be broken down as follows: the number of pedestrian visitors is up very substantially from 1.5 million to just over 2 million, signifying an increase of 28 per cent. Foreign-registered vehicle arrivals went up from 1,472,317 in 1997 to 1,507,916 in 1998, an increase of 2.5 per cent. Of greater significance is that 4,208,906 persons entered Gibraltar in their private motor vehicles in 1997 and this increased to 4,500,405 in 1998, an increase of almost 7 per cent. The number of coaches

which arrived is at an all time high, at 12,957 coaches in 1998 compared with 11,685 in 1997, an increase of over 10 per cent. Obviously, the number of visitors on coaches has consequently increased. Tourist arrivals by air in respect of visitors staying in Gibraltar has increased from 33,949 in 1997 to 35,890 in 1998, a rise of almost 6 per cent and this is echoed by the increase in the number of bed nights sold by hotels. This increased from 143,646 in 1997 to 144,538 in 1998. Indeed, the average length of stay at hotels has gone up from 2.99 days in 1997 to 3.44 days in 1998 and hotel occupancy has risen from 39 per cent in 1997 to 43.1 per cent in 1998. The number of cruise calls stood at 135 in 1999 compared with just 99 calls in 1997, an increase of 36 per cent, and the prognosis for this year is particularly healthy with about 200 cruise calls expected - another all-time record. The number of yachts calling at Gibraltar has also increased from 3,998 in 1997 to 4,079 in 1998, and a former downward trend has now been well and truly reversed.

Upper Rock admissions in 1998 stood at 709,349 compared with 631,185 in 1997 and 538,727 in 1996. This represents an increase of 12.4 per cent in the last year and almost 32 per cent in two years. Admissions at the Museum have gone up from 14,704 in 1997 to 18,180 in 1998, an increase of 23.6 per cent. Cruise calls are staying in Gibraltar on average for a longer stay.

Mr Speaker, I have to stress that what I have been quoting are real figures based on actual counts of persons and vehicles. They are not the result of mathematical formulae but actual numbers and these obviously speak for themselves.

HON J J BOSSANO:

If the Minister would give way. Does it mean that they have been calculated any differently from the figures in the published survey in the previous year? Is that true of the previous years' figures or only of this year's?

HON J J HOLLIDAY:

No, these figures have been calculated and counted for exactly the same as in previous years. What I am saying is that the numbers that I have quoted are not based on any mathematical formulae that the Statistics Department used in order to come up with any particular calculation for valuation purposes. All we have done is quoted actual bodies that have come physically through the entry points that I have quoted during my address.

The first subhead which needs to be highlighted is subhead 8 – Marketing, Promotions and Conferences. The projected spend in respect of this item has been increased to £825,000. The House will note that expenditure on this item last year surpassed the estimate which stood at £650,000. The reality is that, although it may seem like a very large sum to spend on marketing, there are many calls on the Tourist Board budget and in order to make some impact on the market it is necessary to invest in this area. I would now like to give a breakdown of the way in which the £825,000 will be spent. The first item is advertising including consumer advertising, direct response advertising, general trade and travel advertising, conference and incentive travel advertising and advertising for the Spanish market, a total of £352,000. Literature, including the production of brochures, the UK/GTA brochure, brochures for the Spanish market, production of "The Key" newsletter for travel agents both in the UK and Spain - £138,000. Promotional Material, including production of posters, video updates, new transparencies, corporate gifts, etc. - £25,500. Promotional Activity including travel trade personnel training in UK and Spain, consumer and travel trade roadshows in UK and Spain - £37,450. Familiarisation trips for travel agents from UK and Spain and press visits for both travel writers for the general press and specialist travel press - £45,000. Travel Fairs, including World Travel Market, Medcruise, Seatrade, the London Boat Show, Confex and EIBTM, FITUR and SITC in Spain, the Dive Show and the airline Routes exhibition - £130,550. Events staged in Gibraltar, including the Gibraltar International Regatta, the Blue Water Rally, the Dog Show and the CARTA Conference for independent UK travel agents - £27,500. Contracts for the

Advertising Agency in UK, the Conference Bureau and subscriptions to professional bodies - £69,000.

Obviously, there may need to be changes in the amounts spent on each general subdivision so that unexpected opportunities which arise during the course of the year can be maximised.

The next significant item on which I would like to comment, Mr Speaker, is new subhead 9, Apes Management, which Government have recently discovered to be of significant interest to Opposition Members. Government are currently in the process of finalising the details of a contract with both GONHS and Mr Mark Pizarro in order to provide for a proper, structured programme for ape care including health care and health screening. The cost of food and staff services for the apes was previously covered by the Sights Management Limited contract, which the Government terminated in February 1999.

The advice received by Government from learned persons in the field of ape management was that the Rock Apes were not being cared for properly. Government want to address this matter vigorously, and therefore the funds to allow for this are being put in place. Once the new strategy is in place, there should be no repetition of the events which have led to ape packs splintering and causing distress to residents of Catalan Bay late last year and to the residents of Moorish Castle Estate and the northern section of the Upper Town area this year. Indeed, Mr Speaker, I welcome the opportunity to indicate that the ape problem at Moorish Castle Estate is in the process of being resolved. The animals which have now taken up residence in the area will be captured and removed elsewhere at the earliest opportunity.

Turning now to subhead 10, Hotel Training School, the amount budgeted last year under this subhead included the cost which is paid to the students who enrol on the course. This is in fact paid by the Ministry for Employment and does not therefore need to be reflected in the Tourism Head of Expenditure. This explains the drop in expenditure projected under this subhead.

Mr Speaker, I am pleased that the third intake for the school has just been recruited and the new students have just commenced their training. The first intake has now completed eight months training and the second intake is now in its fifth month. The prospects for the school are encouraging, and the recent letters in the press from students enrolled on this course show just how much benefit is being derived by Gibraltarian youngsters who are committed to training and employment in the hotel industry in Gibraltar.

Under subhead 10, I wish to highlight the £25,000 which will be spent on Customer Care Training. I know that this initiative has been welcomed by many companies in the private sector and by representative bodies such as the Chamber of Commerce and the Federation of Small Businesses. Training is important at all levels. Tourism is primarily a service industry and it is helpful to have a Customer Care programme for improving standards both within the public and private sectors. The Training is being provided by AQS, a specialist UK company which carries out customer care training for the Welsh Tourist Board, and abroad for countries like Canada and South Africa.

I have already commented on the increased spend on Gibraltar Development Corporation salaries, which impacts on subheads 11 and 13, and so I will not repeat myself at this stage.

Subhead 12 relates to the operation of the Tourist sites. Staff Services are essentially the costs of the salaries of the former Sights Management employees who were absorbed by the Gibraltar Development Corporation. Running expenses relates to the costs inherent in maintaining the main Government-operated tourist sites. The total cost of this is estimated at £645,000. This sum compares favourably to the sum in excess of £1 million which was spent by Government under the terms of the former Sights Management contracts. The savings generated permit additional expenditure to be dedicated to new activities which were not covered by the former Sights Management Limited contracts, such as the Apes management programme and the

provision of better cleaning services for Tourist Sites. I believe that the Government are now getting value for money.

I cannot conclude my remarks on tourism, Mr Speaker, without publicly thanking the members of the Tourism Advisory Council which advises me on tourism matters. These are Brammie Benatar, Brian Callaghan, James Gaggero, Eddie Guerrero and Ken Robinson. I am grateful to them for giving freely of their time.

I also wish to acknowledge the good working relationship during the course of the year with the President of the Chamber of Commerce and the Chairperson of the Federation of Small Businesses and the Chairman of the Hotels Association, all of whom I meet regularly in order to maintain dialogue on matters of mutual interest.

I now move on to Other Charges – Airport in Head 6B – Transport. I do not think that these figures require comment. The estimate for this year is in line with last year's forecast outturn.

I nevertheless welcome the opportunity to highlight the fact that the number of air arrivals at Gibraltar has increased from 83,200 in 1997 to 91,100 in 1998, a rise of 9.5 per cent. Furthermore, there has been an increase in air arrivals of a further 4.5 per cent in respect of the first four months of this year compared with 1998, showing a healthy rate of growth, particularly as the winter months are the leanest for airlines.

Insofar as attracting new airlines to Gibraltar is concerned, the Government continue in discussion with several airlines. There are a number of opportunities which are being explored. However, this is a complicated area, particularly given the high operating costs for the Gibraltar airport compared with competitor airports in the region. Government are nevertheless committed to supporting airlines which wish to establish new services to Gibraltar be it from UK airports or elsewhere.

Under Other Charges – Roads, there is only one real matter which I feel needs to be highlighted, this relates to subhead 5,

Materials and Other Costs. This is basically the cost of materials for works which are carried out in-house by the direct labour force. There was an underspend in the last financial year for a variety of reasons, none of which were foreseeable. The amount budgeted for this year is in line with the funds which were available last year and they reflect a realistic estimate of the work which can and will be carried out by the Highways Department.

In keeping with Government policy to involve the workforce of the Highways and Sewers Department more closely, the programme for works will be undertaken by direct labour is now in place. There is in fact more work to be done than can reasonably be done in a year. I have undertaken personally to the men involved that the programme of works which will be funded from the Improvement and Development Fund will in no way reduce the volume of work which is earmarked for the men in the direct labour force to undertake. It is simply a case that different types of jobs will be carried out by the direct labour force and others by outside contractors.

The programme of works to be carried out by the direct labour force will include the following resurfacing work: Part of Europort Avenue, by the Rowing Clubs (which I believe has now been undertaken since the beginning of this financial year); Part of Calpe Road; Cornwall's Lane; Lower Witham's Road; Part of the area of Europa Point; Red Sands Road; The top of South Barrack Road; Castle Street; Governor's Parade; Tank Ramp and Tarik Road; and Buena Vista Road.

When I come to the Improvement and Development Fund, I will give details of the works which are scheduled to be put out to tender in respect of road improvements and resurfacing.

Government wish the Highways Engineer to be more closely involved in forward planning and the development of short, medium and long-term strategy of this department. To this end, the office of the Highways Engineer will shortly be moved to Duke of Kent House and the depot will be supervised by another engineer.

Moving on to Other Charges – Traffic. There is nothing of major moment to comment on with regard to Other Charges in respect of Transport - Traffic, Head 6-D. The only increases under the Motor Vehicle Test Centre reflect the fact that the clerical and administrative staff of the Licensing Department now come under this Head instead of that of the Accountant General.

Insofar as Gibraltar Security Services is concerned, I would first of all like to highlight that the unit has been re-housed at New Harbours. Their former premises were utterly inadequate, and this issue has now been resolved. I am also pleased that the unit has acquired a new tow-truck to commence the renovation of its fleet of vehicles. During the course of the year, I hope to finalise discussions with the employees of the unit with regard to their conditions of employment.

Finally, in respect of traffic matters, I would like to publicly recognise the assistance of the Traffic Commission, and its Chairman, Mr Bryan Clark, whom I am in contact with regularly to discuss matters in relation to both traffic and transport.

Moving on to Other charges – Port. Insofar as the Port Department is concerned, Head 6-E, there are only two changes from the position as estimated for last year. The first is in respect of the amount earmarked for Maintenance of Launches. There was until recently a Port Maintenance section of the Port Department. It is now intended that some maintenance work should be done by private sector companies, to supplement in-house expertise. The additional funds earmarked for this is £7,000.

The other increase in expenditure will be in relation to oil pollution training, where the funds available for this have been doubled. The preparation of the Port to combat any oil pollution incident is a matter to which the Government attach great importance particularly given the volumes of bunkers which are being supplied to ships in the Bay of Gibraltar.

During this last year, for the first time there was a marketing drive to promote both the Port and the Ship Register. The first event was a presentation at the Baltic Exchange in London. This was followed by a similar presentation in Athens, the most important maritime centre in the Eastern Mediterranean. This second marketing initiative was funded by a partnership of Government and private sector players in the port sector. It is my intention that the Port of Gibraltar should be run on more commercial lines in the future and marketing will continue to play an important part.

Insofar as port activity is concerned, there has been a sustained growth in business. Including off Port limits calls, there were 5,574 ships which called at Gibraltar in 1998, compared with 4,834 in 1997, an increase of 15.3 per cent. The number of ships which called at Gibraltar in 1996 was 4,505 and in 1995 it was 3,784. Over this four-year period, the increase has therefore been over 47 per cent. The gross tonnage of these vessels was 117.3 million tonnes in 1998 compared with 101.8 million in 1997, an increase of 15.2 per cent over the previous year. The 1996 gross registered tonnage of ships calling at Gibraltar was 92.8 million and in 1995 this figure was 69.1 million. The increase over four years has therefore been just under 70 per cent. This represents a substantial increase in the volume of shipping at Gibraltar and of business.

Government will shortly be making a policy statement with regard to the recommendations of the Port Study, which have been generally accepted. There will be changes consequent on this matter which will be introduced over the next few months. One area where there will need to be discussion with the staff associations is the manning of the Port Department and the future plans for the Gibraltar Port Authority. These discussions will commence shortly.

Some of the changes are designed to grow the Off-Port Limits business, to increase the scale of berthing fees and tonnage charges which apply to port users, to raise fees in respect of matters for which there is no charge at present, to increase the land available to the Port for commercial use, to introduce security

measures into the whole of the commercial Port and to reassess traditional working practices.

The Government consider the Port is a valuable asset for Gibraltar and that it needs to be developed. It is leading the way by investing in the Port.

HON J J BOSSANO:

Mr Speaker, before he moves on. I asked about the fact that in the Shipping Registry fees the outturn is one-third of what was expected and the projection for the next 12 months is still at that level. I do not think it is a point that the Minister has dealt with.

HON CHIEF MINISTER:

Mr Speaker, the Minister is addressing the general principles of the Bill. The purpose of the Minister's address is not to respond to the points that the hon Member has made, he is expressing his departmental speech. The issues of detail that the hon Member has raised in his address have been carefully noted and will be addressed in its proper time which we consider to be the Committee Stage of this Bill, with all the other issues that he has raised and there are quite a few of them.

HON J J BOSSANO:

With all due respect to the Chief Minister. The revenue Heads are not the Heads we go through when we come to the Committee Stage and, in fact, he has given a lot of detail, it seems to me. If the Minister has just said that they are marketing increasing shipping registration, I would have thought he ought to be able to indicate the explanation for that. If he does not want to do it now, fine.

HON J J HOLLIDAY:

Mr Speaker, no I would like to clarify, before I complete my speech I actually will be addressing some of the issues under the

revenue section and in fact I intended to deal with that matter before I finish.

Moving on now to Other Charges - Shipping Registry. Finally, insofar as expenditure on Other Charges is concerned, I turn to the Ship Registry. There is only one significant additional item of expenditure under this Head, this is the £10,000 which has been budgeted for the hosting of the Red Ensign Group Conference which took place in Gibraltar from 25th to 27th May this year. Government believed that it would be helpful to the Gibraltar Ship Registry that this conference should be held in Gibraltar as it helps to grow the perception among ship owners that Gibraltar is a Category 1 Register within the Red Ensign Group which offers many advantages to ship owners, not least because of Gibraltar's membership of the European Union.

The conference has been highly successful, not because I say so but because this is the view communicated publicly by the Chief Executive of the UK Maritime and Coastguard Agency, the MCA. I am delighted that this was the case.

Turning now to the Improvement and Development Fund, Mr Speaker. Head 103 covers Tourism and Transport. Subhead 1 provides for the annual expenditure on beaches, and for the provision of new planted areas. In addition, work will be carried out to improve tourist sites. Specific projects which are earmarked are the next phase of the comprehensive tourism signage project; and a continuation of the City Walls floodlighting project. In addition, there will be minor improvements carried out to tourist sites, including work on the City gates and the upgrading of equipment in public toilets.

There will be a public consultation exercise in relation to the planned beautification of Catalan Bay. This will then be followed by an improvement programme. This will complement the attractive work which is being carried out on widening Sir Herbert Miles Road. Devil's Tower Road will then be up for improvement, but this project will not take place during this financial year because there will be insufficient time to commence this major work.

In addition, Government have now commenced a study which will lead to a fully-fledged programme to regenerate the east side beaches covering the area from the north end of Eastern Beach to the south end of Catalan Bay. Part of the scheme will cover the "East Side Disaster Area" which Government inherited from the previous administration. Obviously, there will be an environmental impact study carried out together with a study of various options which will result in works being carried out to prevent sand being eroded from the beaches. It is an exciting flagship project for the Government, and it will totally revolutionise the way in which Gibraltarians will be able to look to the East Side beaches for leisure and recreation during the long summer months.

Subhead 2, Enhancement of Tourist Entry points, consists of two principal projects: the completion of the Coach Terminal and the improvement of the Land Frontier building. It is estimated that the new Coach Park will be completed and in operation by August 1999. This will be a tremendous benefit to the many thousands of visitors who arrive at Gibraltar on coaches. Indeed, 116,807 persons arrived on 3,102 coaches in the first four months of this year. They deserve far better facilities than have been available up to now for this important segment of the tourist market and they will shortly be enjoying them.

Another of the entry points which will be coming on stream shortly is the Ferry Terminal, which is due for completion in August 1999. This Terminal building is considerably larger than the old, shabby Ferry Terminal but has been designed to echo the style of the original building. This project is partly EU-funded.

By the autumn, the Gibraltar Tourist Board will be operating three new facilities to welcome tourists in the same area: the Cruise Terminal, which has been highly praised by many users; the Coach Terminal and the Ferry Terminal.

The Land Frontier improvement project is more complicated. It makes no sense to commence work on enlarging and improving the existing building with the height of the tourist season just

round the corner. Much will be done in terms of preparatory works at this stage but the major works will not be carried out until the winter months.

There are other projects on the drawing board which will assist with the tourist development of the Gibraltar product and which will at the same time contribute to the bid by Gibraltar for recognition and listing by UNESCO as a World Heritage Site. They involve the restoration of some of the major elements of our cultural heritage. A long-term plan is presently being prepared and preliminary studies will be carried out to determine exactly which projects need to be carried out, at what cost and within what time-scale.

Subhead 3 covers Airlines Assistance. On the one hand, funds have been earmarked to assist both GB airways and Monarch Airlines with the high landing charges at Gibraltar Airport compared with other airports in the region. On the other, money is available to assist new airlines to commence operations to Gibraltar. In this connection, as I have already informed the House in answer to questions from the Opposition, I am reluctant to give information with regard to the airlines which are interested in operating to Gibraltar until such time as there is a definite programme in place. I look with confidence to this financial year as one during the course of which at least one new airline will come on stream.

Subhead 4 will practically complete the Hotels Assistance Scheme. Most of the hotels have now finished their refurbishment programmes or will shortly do so. The only notable exception is the Caleta Palace Hotel, which is presently involved in major work refurbishing its bedroom stock and common facilities and building a conference centre. Already, the prospect for hotels is far better than it was and I attribute this directly to Government assistance under the Hotels Assistance Scheme. It is Government's intention that the improved performance on the part of hotels should be sustained. Frankly, Mr Speaker, I believe that the quality and standard of Gibraltar hotels compare favourably with international

standards and this will undoubtedly convert into much-desired repeat business.

I would like to highlight, in connection with hotels, that the feedback which I am receiving, particularly from regular visitors is that they believe that the standard of hotels is far higher than it used to be. This is reflected by the reports I have from the hoteliers that not only are occupancy levels increasing but their yield is also up. Customers are prepared to pay higher rates for a better product and this is more money which is coming into the Gibraltar economy.

In tandem with this, and as part of a responsible approach by Government, there are arrangements with hotels to reduce their historical arrears to Government in respect of charges for utilities and municipal rates. Some of these debts date back to 1991. I am confident that the repayment of these old debts will be achieved over the next few years. What needs to be highlighted at this stage is that the growing level of debt in this sector was arrested some time ago by Government and the tide has now turned. The debts are reducing.

Once the hotel refurbishment and improvement programme is completed, Government intend to introduce a grading system for hotels. Already, talks are at an advanced stage with an entity which grades hotels in the United Kingdom with a view to extending their hotel inspection and grading system to Gibraltar.

Subhead 5 is the funding for the new Motor Vehicle Test Centre. The centre at North Mole Avenue is simply a stop-gap measure. I hope to announce shortly that work will commence on the new test centre, which will be an extension to the existing centre at Eastern Beach Road. I regret that work did not commence on this project during the course of the last financial year. The machinery for the new Centre has been identified, following a tender process, and the tender for the construction of the new building is about to issue. Obviously, the building has to be designed round the machinery and it was not possible to issue the tender for the construction works until the machinery had been chosen. I look

forward to the completion of this project so that the Motor Vehicle Testers can work in more pleasant surroundings.

Subhead 6 covers traffic enhancements, including bus stops. It is intended to upgrade bus stops during the course of this financial year. Some of the older bus stops are a disgrace and this matter needs to be addressed vigorously. In addition, this subhead will cover expenditure in respect of the purchase of additional parking meters and new motor vehicle clamps.

Subhead 7 will cover road construction and resurfacing. The roads which it is intended to put out to tender to resurface are the following: The Upper Rock, from Signal Station Road and part of Willis's Road; Market Place; Western Arm Phase 1; North Mole Road, from the junction with Waterport Road to the junction with Europort Avenue; Waterport Road and Devil's Tongue Road; Sir Herbert Miles Road; Europa Road; Rosia Road.

In addition, work will be carried out on some retaining walls at Arengo's Palace and South Barrack Road.

Over and above this, work will continue to link the attractive North Mole Avenue with the Coach Park, a project which is now well under way, and which will continue as far as Waterport Fountain. The entrance to the city from the area of the Port and the Coach park will be totally transformed.

Finally, subhead 8 covers infrastructure improvements for the Port Department. The bulk of the funds being made available will be used for the purchase of new launches for the Department. The first new launch will be delivered by the end of 1999. It is a Halmatic Talisman 49 launch, which will greatly improve the Port Department's ability to police Port waters and to carry out the many duties of the Port Authority which require the use of a launch. This is in fact the first time that the Port Department will acquire a newly-built launch since 1946. Other launches acquired since then were obtained second-hand.

A draft contract for the purchase of a second launch is being considered, and it is envisaged that an order for this second new launch will be placed shortly. The views of the Port Department indicate that this second launch should primarily have a search and rescue function.

Two of the other items of expenditure under this subhead are the funds earmarked for the introduction of Port Security and for the purchase of equipment to counter oil pollution. A tender in regard to the security works will issue shortly. It is important that the Port should become a controlled zone, which will be policed by Port Department personnel. This will be of benefit to the cruise industry. It will also be beneficial to all port operators, as it will prevent accidents occurring to people who have no business to be in the commercial Port.

Insofar as pollution equipment is concerned, the basic rule is that "the polluter pays". However, Government will not sit idly by waiting for a decision - perhaps from a Court of law - to determine who has been guilty of causing a pollution incident. When an incident occurs, it must be tackled promptly and the culprit eventually forced to cover the cost of cleaning up. To this end, it is necessary for Government to purchase a supply of detergent and dispersants which will be to hand in case of need as a basic emergency stock. The total package which Government have put in place in respect of combating oil pollution consists of the purchase of emergency supplies of equipment and chemicals; training of personnel and conducting exercises to test readiness to counter oil pollution and finally our membership of Oil Spill Response Limited. A prudent strategy is in place in this area.

Finally, funds will be made available for the purchase of further diving equipment, for replacement of fenders, for replacement of the Port Lookout windows, for re-siting the Port Social Club and for the purchase of pontoons.

Mr Speaker, the Port is flourishing as a bunker supplier. The volumes handled in 1998 have been very significant and have confirmed Gibraltar's position as the number one bunker supplier in the Western Mediterranean; 2.5 million tonnes of bunkers were supplied to shipping and in addition 6.5 million litres of lub oils. The Government wish to encourage further development of Gibraltar as a bunkering port, and also to expand into other areas of port activity. This new financial year will therefore see a continuation of Government investment in the Port and the further development of what was previously an under-utilised asset.

With regard to the proposed container Transshipment Project, the preliminary work continues. Government will not take a final decision in this regard until such time as the two preliminary studies are completed. One study is a market study, to determine the traffic in containers in the region and therefore the likely success that a transshipment terminal could have in attracting business to Gibraltar. The other is a technical study to assess the best place to site a container transshipment facility.

Head 104 - Infrastructure and General Capital works Subhead 11, Storm Water Drains and Sewers Replacement, will cover the works which were planned for this last financial year which had to be postponed, namely the replacement of the old collapsed sewer which extends from The Convent to Ragged Staff and the laying of a new surface water drain from the junction of Main Street with Cooperage Lane and Landport. The timing for the commencement of the work on the replacement of the old collapsed sewer will be assessed once the Lover's Lane road widening project is completed.

Part of the storm water drain replacement project has been carried out, in the area of Casemates Square. A further part remains to be done, in the area of Corral Road, to provide for an exit from the new storm water drain to the sea. I look forward to these works being completed before the onset of winter rains.

Finally, I wish to touch briefly on the Casemates project. Although this is not being funded by my Ministry, Casemates will play a central role in the development of Gibraltar tourism. In addition to being a focus for visitor attention, together with the other squares along Main Street, I believe that the Square will prove to be a focus for nightlife, something which has been lacking in Gibraltar for far too long. The blend of restaurants, with the possibility of "al fresco" eating, with commercial units specialising in commercial activity which complements and expands on the traditional shopping experience of Main Street, is a recipe for success. I look forward to the opening of the Square in time for the new Millennium.

Finally, Mr Speaker, on revenue, the revenue which will accrue to Government through activity of my Ministry is at revenue Head 4, subheads 1 and 5 and revenue Head 6, subheads 43 to 58.

There are only a few points which I would like to highlight. Gaming Licences, which are at revenue Head 4, subhead 5, were previously collected by the Accountant General. They will continue to be collected by the Licensing Department staff, which now come under my Ministry. The projected revenue from this source for this year will be in line with last year's estimated outturn.

Subhead 43 of Head 6, Tourist Site Receipts, shows that the number of persons who are visiting the Gibraltar tourist sites is on the increase. It is projected that this increase will continue this financial year, and that the additional revenue which will accrue to Government will total £100,000.

Insofar as Head 6 subhead 45 is concerned, Airport Departure Tax, the drop in income from 1997/98 to last year is due to the introduction of a year-round tax of £7 per departing passenger travelling to UK instead of a tax which varied depending on the season of the year. The drop is not significant as it represents just over £10,000, however I am confident that this shortfall will be made up through increased visitor arrivals by air in the months to come.

HON J J BOSSANO:

Is it not the case, Mr Speaker, that at the time it was said that it would have no effect because it was being balanced out, am I correct?

HON J J HOLLIDAY:

That is correct, Mr Speaker. When we assessed the new level of departure tax, this was levelled at £7 being an approximate average. The average has shown that there will be possibly a £10,000 drop assuming that the level of passenger flow is maintained. I am hoping and, as I have said during my address, I am confident that this shortfall will be met by increased passenger flow and the trend is showing that there is an increase in air arrivals so there should not be a decrease in passenger tax collected at the end of the year but we are making an estimate based on existing performances rather than what were our expectations.

Mr Speaker, the income derived last year from Vehicle Testing, Head 6, Subhead 48, was considerably lower than anticipated. This is because a significant number of motor vehicles which were between four and 10 years were not presented for an MOT inspection as there was no need to have an MOT certificate in order to renew the annual road licence. This year, no car which is over four years old will be able to get its road tax disc unless it has had an MOT, so it is anticipated that the number of vehicles which will be tested will be considerably higher than last year, and hence revenue from this source will increase. I would nevertheless like to emphasise that the annual testing of motor vehicles which are over four years old is not designed as a revenue-raising measure. The principal criteria for Government are safety issues, the Government are following the UK model where there is annual testing of motor vehicles. Indeed, in the UK, vehicles which are three or more years old need to be subjected to an annual MOT test, so the practice in England is even stricter than in Gibraltar.

The revenue which is derived from the Port will increase substantially over the figures contained in the estimates when the recommendations contained in the Port Study are put into effect. However, as the new levels of port fees have not yet been agreed, the estimates simply reflect the existing fee structures.

It is projected that there will start to be a gradual increase in the fees generated by the Shipping Registry. The trend which resulted in the departure of ships from the Gibraltar register has been arrested, consequent on marketing initiatives in this field on the back of Gibraltar reopening its full Category 1 Red Ensign Group register. Government took too optimistic a view of the volume of business that would be generated from this source in the first year of operation. I believe that this source of revenue will be consolidated and will grow over the coming years. I trust that this will clarify the matter which was raised by the Leader of the Opposition during his contribution yesterday.

The rate at which ships have flagged into the Gibraltar register has been on average one per month over the last five months. There are now several bareboat registrations, and a niche market for Gibraltar would appear to be emerging in the Eastern Mediterranean to maximise on cabotage opportunities within the EU which the Gibraltar Flag offers and which other Red Ensign Category 1 registers, with the exception of the UK, cannot offer.

Moving on to the estimated revenue totalling £140,000 for the year 1999/2000, from Port arrivals and departure tax which was raised by the Leader of the Opposition during his contribution yesterday, I wish to inform the House that this level of revenue is based on the new incentive scheme offered to cruise companies where reductions are given with increase in the frequency of calls. This incentive has been well accepted in the market and has attracted an increase in the number of cruise calls. The actual direct revenue has not been effected, however it is clear that the indirect benefits from the increased number of cruise calls is a very good support to the economy.

Mr Speaker, there has been much activity in those areas which fall under my ministerial responsibility in the last 12 months. There is still much more planned in the months to come. I believe I have cause for satisfaction in the estimates of expenditure in respect of Head 6, of the infrastructure investment plans and of the estimates of revenue for my Ministry.

HON H CORBY:

Mr Speaker, this is the first budget session that I have attended in this House in which one of the Members of the House elected at the last elections is now not with us and I am of course referring to my good friend the late Hon Robert Mor, my opposite Member. I miss his sense of humour and wit and I shall miss his intervention in this House.

In last year's budget, in jest, he said that the only time in which my ministry could shine was in the budget session. I know that having done the job himself when in Government he knew quite well the pressure and demands made not only on the Minister himself but also on my ministry.

Having said that, Mr Speaker, before I deal with matters directly related to my Housing and Social Security Departments portfolio, I would like the leave of the House to dwell on a subject dear to my heart – drug rehabilitation – on which significant progress has been made during the past 12 months.

It was certainly a very proud moment for me earlier this month when I stood by the Duchess of Gloucester at the Inauguration Ceremony of the New Hope Trust at Bruce's Farm which I hope will be a great success. As hon Members know I have personally been working – both within and outside the House – for almost 15 years towards this end.

Bruce's Farm is the ideal location for such a much needed facility and I hope it will become a home from home for the people who use it.

The New Hope Trust Rehabilitation Centre will be funded by the Government at a cost of £140,000 a year and it is modelled on the UK Broadway lodge centre. It will be run by a trust comprised of four people who are all volunteers, there will also be paid salary personnel in the centre on a 24-hour basis. The volunteers in the Trust are Gladys Perez, Louis Diaz, Louis Bruzon and Roger Estella.

It gives me great satisfaction to have this project see the light of day during my first term of office as a Minister of this Government.

Now let me turn to housing. We have achieved four major tasks during the course of the year. In the first place I can finally report to the House that the last tenants from the pre-fabs were decanted into Government post-war accommodation. This has resulted in the area being cleared and a much-needed free parking area becoming available to the great benefit to the people of Gibraltar and tourists alike.

The past 12 months have also seen the housing agency embark on a process to renew its housing allocation programme to make it year 2000 compliant. The opportunity has been taken to update the system to fully computerise the agency and hopefully provide a better service to the public.

This year will see a major breakthrough in housing allocation with the completion of the refurbishment of Edinburgh House. To a greater extent than ever before, Edinburgh House becomes available for Gibraltarian families. Services quarters of the past now become the domain of local families, most certainly a sign of the changing times.

This allocation to applicants on the housing waiting list will greatly alleviate the needs of people who require accommodation and show this Government's commitment to cater for the accommodation needs of those who cannot afford to buy their own property but deserve to be housed adequately as indeed should be the case for all families within our community.

Another landmark in this Government's social housing policy will unveil itself during the course of the year when Bishop Canilla House will be completed. This is a new concept for Gibraltar in that these flats have been specially built with the needs of the elderly in mind. The flats will be allocated with a view to helping our senior citizens enjoy a better quality of life.

Similarly linked to the Government's belief that our senior citizens deserve to enjoy as comfortable an existence as we can provide for them in recognition of a lifetime's dedication to work and their families, are the changes we have introduced within the Social Services Department over the past three years, lest hon Members might have forgotten we have now successfully completed the third year in our first term of office.

We started off in 1997 by bringing forward the actual payment dates of old age pensions and widows benefit from the 10th of each month to the 1st to provide a better service to our pensioners. In January 1998 we provided a further opportunity to pay arrears of social insurance contributions to those persons who were eligible to pay arrears on 6th January 1975, but did not elect to do so at the time. This applied to those persons with an incomplete contribution record in respect of periods of actual employment in Gibraltar at a time that they were exempted or prohibited by law from contributing to the social insurance scheme because they either earned more than the £500 ceiling, or were self-employed. I am pleased to say that a total of 614 persons availed themselves of the opportunity thereby enhancing their pension payments.

Also under the overall umbrella of improvements to social security, the handicapped person allowance which had remained at the same rate since 1988 was substantially increased in June 1998 from £14.70 to £21.50 for persons under 19 and from £21.70 to £31.70 for those 19 and over.

On social insurance contributions, the Government have maintained the contribution rates at the same level as in 1998.

In keeping with the Government's programme of ensuring efficiency to the public within the Department of Social Services and appropriately as we approach the new millennium, it is our intention to go for full computerisation. The first stage of this exercise has been put in place and payment of pensions and other benefits have already been successfully computerised. The next stage of computerisation is being studied and should be implemented as feasibly possible.

Whilst on the subject of drugs rehabilitation, the Government are also participating and supporting a Royal Gibraltar Police campaign in the media aimed at making the public aware – youngsters particularly – of the dangers involved in experimenting with drugs.

I am of the view that no effort should be spared in driving this message home. My ministry is happy to be associated with "Operation Triangle" along with other Government departments, essential services and social groups in this worthwhile effort to educate the public on this crucial matter. The campaign involves advertising in the media and a series of eye-catching events, the first of which is a mini-Olympiad and Family Fund Day at Marina Bay which will be taking place on the 5th June and we hope will be supported by the public at large.

Quite independently to these efforts, the Government are combining work in this field from the Health, the Education and the Social Services Departments in pursuing a determined strategy to counter drug abuse.

The upkeep of the prison is yet another of my responsibilities. Moorish Castle prison has undergone major refurbishment. The refurbishment programme spanning over a four year period is quite comprehensive, involving amongst other improvements, the re-laying of water supply and electricity distribution systems; re-roofing new switchboard room and security cameras system; toilets; bathrooms and cell bars renovation. The total cost of the programme which now goes into its final year is £247,632. The female wing, which was in a dreadful state, was recently

refurbished at a cost of approximately £20,000 and was funded by the Foreign and Commonwealth Office via The Convent.

Mr Speaker, in finishing, I would like to end my contribution by thanking my staff for supporting me in every venture and also for their hard work during the year.

HON DR J J GARCIA:

Mr Speaker, I note this year in his contribution, the Minister for Tourism has been considerably more conservative than in his previous years and perhaps it has been very wise that he has decided to take that course of action since it is particularly important, I think, with regard to this Government, to measure what they say and compare that to what they actually do. In the course of my intervention, Mr Speaker, I hope to go through that in various areas to establish what has been said and what exactly has happened.

I think the starting point has to be obviously the figures and the estimates themselves. I am grateful because the Minister has mentioned, with regard to certain subheads, queries which we had in the Opposition and which he has already clarified. But certainly at the Committee Stage we will be mentioning subheads 5, 7 and 8 on which I believe there has been no clarification and perhaps seek further clarification on a series of other points.

Mr Speaker, it is increasingly clear that any analysis of tourism must necessarily start from the figures and the statistics and the way these figures are compiled. Concern therefore is twofold. First, at the way in which the surveys have been conducted and, secondly, the question of how representative a sample actually is. The Chief Minister referred to the unsophisticated system of information collection and analysis and in opening his address this year he also referred to the figures and to their reliability in certain areas in certain cases. I think the most glaring one, which both the Chief Minister and the Minister for Tourism have failed to mention is the question of visitor arrivals from Morocco. In answer to questions last year we were told that in 1995 there were 3,100

visitors spending £100,000; in 1996, 9,500 spending £700,000; and in 1997, 20,700 spending £3.1 million. We now know the number of visitors from Morocco in 1998 and the number staying in hotels and the amount that they spent was completely miscalculated by the Government. The visitor arrivals by sea showed a dramatic increase from 3,100 to 9,500 to 20,700 in 1997. The Government estimated that 11,000 of these visitors in 1997 had stayed in hotels for an average of four nights each. This translated into a 700 per cent increase in visitors from Morocco, a 400 per cent increase in occupancy of hotels from the ferry and a 100 per cent increase in tourist expenditure. When the Opposition questioned the increase in ferry visitors and the knock-on effect that this had on the hotel visitors and tourism expenditure in the House in September 1998, the Government defended the figures. The Chief Minister said, in response to Question No. 404 of 1998, "The Government are content otherwise we would not give the information to the House, that the information that is given to the House is accurate". Speaking of that period in his budget speech last year, the Minister for Tourism said, "the tourism spend during the same period by people staying in our hotels more than doubled from £8 million to £17 million. Such results are not obtained by themselves; they require much hard work, effort and commitment and these have been forthcoming". We now know, Mr Speaker, it was due neither to hard work nor to effort nor to commitment, it was due to the figures being completely incorrect, as the Opposition had pointed out in the first place and the Government refused to accept. Finally, in response to Question No. 129 in February this year, the Chief Minister admitted that the figures were not correct explaining that this was caused by an oversight, that the figures for visitor arrivals from Morocco in 1997 and 1998 were not adjusted to include passengers who were resident in Gibraltar. When the Opposition behave in a constructive and in a responsible manner in bringing up this question, it was the Government that stubbornly and almost arrogantly refused to accept the possibility that these figures were completely wrong only to acknowledge this fact six months later. The second issue in relation to the figures has to be in terms of the sample. For example, in all of February 1999 two people who had stayed at a hotel were interviewed at the border, seven

people for the whole of March 1999 and one person for the whole of April with 20 at the airport in each month. In April 1999 there were 182,023 crossing the border of which one person who stayed at a hotel was interviewed. On that basis, Mr Speaker, the figures were calculated. This begs the question as to how representative the samples are and casts out as to the accuracy of the figures being given.

I move on now to the question of marketing. To speak of a tourism policy is a contradiction in terms, there is no tourism policy. What is in place, simply involves spending hundreds of thousands of pounds, attending trade fairs and exhibitions all over the place in the hope that more people will come to Gibraltar. If for want of a better word we want to use the word "policy" then the Government's tourism policy is like one of those pirate holiday brochures, full of pretty pictures printed in attractive colours on thick glossy paper, bursting with promises and failing to deliver the product. Everything they do is a success. Is it not about time that Gibraltar should be seeing some results from that success? The money that they are spending has to be justified by the return and it is clear that in proportional terms the return is not there. People in Gibraltar whose livelihood depends on the Government's success in this area and who listen to what the Government are saying are wondering what is going on? Where is the project Gibraltar; the Gibraltar experience; the theme park with Donald Duck walking up Main Street that the Chief Minister promised? This is the daily barrage of propaganda that the people of Gibraltar have been subjected to since 1996. Where are all the people and why is trade in Main Street not booming? They painted an extraordinary picture; a combination of Alice in Wonderland and Peter Pan with the Chief Minister presiding over this dream, having tea with the Mad Hatter and lunch with the Queen of Hearts unaware that this fantasy world that was promised was and remains very distant from the harsh day-to-day reality of life. From what the Minister has said, all they intend to do this year is spend more money on more marketing to advertise and attend more trade fairs in more places and then wait and see what happens. That is having no policy at all. What the Government are doing is throwing more and more money away in

a haphazard way without measuring the results. The estimates tell us that the marketing budget now stands at £825,000; do the Government measure the effects of how that money is spent or do they not care about the financial consequences of the economic fiasco of events like the Carreras Opera Concert that they staged? So much has been spent in hotels, on marketing and in beautification but no effort seems to be made to measure the results and to maintain the concept of value for money. Mr Speaker, the odd figure may have gone up here and there, I can only say that those of us in the Opposition should very well hope that something or other has gone up given the vast amount of money that has been spent.

It is also important at this stage to go into each area and to establish exactly what it is that has gone on. With regards to the frontier, tourism by land, the number of cars, pedestrians and coaches have all dropped in 1999 when compared to the same period of 1998. In his budget speech in April last year, the Minister for Tourism said, "The promotion of Gibraltar tourism in Spain will step up when the Gibraltar Tourist Board Office opens in Madrid". Let us see how that statement compares with the figures. In February, March and April this year, there were 597,828 pedestrian visitors to Gibraltar. There has been a drop of nearly 60 per cent in pedestrians crossing the border in February, March and April of 1999 compared to the same period in 1998. In terms of cars, Mr Speaker, in February, March and April 1999 there was a total of 246,903 cars compared to 475,581 in the corresponding period of 1998. There has therefore been a drop of nearly 52 per cent in cars crossing the frontier in 1999 compared to the corresponding period of 1998. Therefore it is not a case of people parking cars and crossing on foot because the number of pedestrians has also dropped by 60 per cent. Obviously because there are less cars, the people in cars has dropped accordingly, around 57 per cent according to our calculations, in February, March and April 1999 compared to the corresponding period of 1998. I note that the Minister referred to coaches, well it is interesting that in January, February, March and April 1999 the figures for coaches is lower than it was in the corresponding period of 1998, 1997 and 1996. In the first four months of this

year there has already been a drop of about 19 per cent in the number of coaches coming into Gibraltar when compared to the first four months of 1998. The number of coaches that have come into Gibraltar in 1999 therefore, from January to April is less than the number in the corresponding period in 1998, 1997 and 1996. Last year the Government opened an office in Madrid which cost over £40,000 to set up and the estimates show on which £88,000 was spent or forecast as spent in total. Nearly £14,000 was spent in FITUR, yet the number of cars, pedestrians and coaches coming into Gibraltar in 1999 is less than it was in 1998. How do the Government measure whether any of their marketing operations is a success? For instance, this year £5,000 was spent attending a Tourist Fair in Barcelona. How do we know whether we have less Catalans or more Catalans coming into Gibraltar? How does one determine success when in the first few months of the year the figures have dropped compared to the same months of 1998? Even though the marketing budget from last year overspent by £135,000, we have less people, less cars and less coaches crossing the border in 1999 when compared to the same period in 1998.

We move now, Mr Speaker, to the area of cruise liners and I note, again, that the Minister referred to an increase and highlighted it once more in a general sense in terms of it being one of the main areas in which the Government would like to see some movement. We had less cruise liners in 1998 than we had in 1996. It is important to look at the difference between what the Government actually say and what is actually happening on the ground. Areas like the Cruise Liner Terminal and the North Mole beautification were not their projects. They were projects which they completed with European Union funding which was already there. In his budget speech last year the Minister for Tourism said, "We anticipate that this year will see an all-time record with about 150 cruise calls". This year, again he said, he hopes that this year will see an all-time record with 200 cruise calls. This did not happen in 1998, the 135 cruise calls in 1998 are lower than the figure for 1996 where we had 139 despite the amount of money spent being considerably more. The number of passengers for 1998 was also lower than 1996 although we

understand that 1999 does look more promising. Another area of concern to many traders in Gibraltar is the question of the length of stay of the ships. The 135 ships that came in 1998 stayed an average of seven and a half hours each; of the 135, 52 ships stayed for five hours or less. That, Mr Speaker, is not enough time for people to come to Gibraltar to see Gibraltar, to go on a tour of Gibraltar, to go shopping in Main Street and to go back to the ship so it is an area where we really need to see some improvement and the figures for 1998 indicate that there is much to be done in that field. Another point which needs to be cleared is the number of passengers that actually disembark. What we get when we ask for figures is the capacity of passengers which the ship can actually take but not those on the ship that actually get out and come ashore which might be perhaps a more relevant figure if statistics are going to be looked at again and are going to be reworked.

In his budget speech last year the Minister for Tourism also promised that in November Gibraltar would be the home port for the liner "Adriana". The Adriana did not even call at Gibraltar in November 1998, according to the information supplied by the Government and indeed according to the information supplied by the Minister himself, neither did the Adriana call in December 1998, January, February, March or April 1999 so obviously we are interested to know what happened to the ship. We are told that 1999 will be a bumper record year for cruise calls like we were told 1998 would be. We should not underestimate the fact that the cruise industry in general is now refocusing on the Mediterranean and that we benefit from the spin-off effect automatically from that spin-off effect, in a way, which has nothing to do with the Government.... [*HON CHIEF MINISTER: What goes wrong is our fault but what happens automatically*] In a way which has nothing to do with the Government's or with their marketing or with their reduction in passenger tax. [*HON CHIEF MINISTER: It is all clear now.*] Mr Speaker, is the Chief Minister saying that cruise ships come to the Mediterranean to visit Gibraltar alone and then they go back?

Equally in the area of yacht visitors, if we compare the number of yachts that have come to Gibraltar in 1998 and we compare that to 1996 there has been a drop of 15 per cent in the number of yachts that have come to Gibraltar. That is another area of concern, another area which certainly worries the Opposition and which the Government need to seriously look at.

The Ferry Terminal, Mr Speaker, is an interesting case in point. The Minister for Tourism has just told the House that the Ferry Terminal will be due for completion in August 1999 so we will have a Ferry Terminal and no ferry, as at the moment there are no sea links with Morocco and the concept of having a three centre holiday and people coming to Spain, Morocco and to Gibraltar..... *[Interruption]*

MR SPEAKER:

Do not interrupt him, let him finish. Carry on.

HON DR J J GARCIA:

Thank you, Mr Speaker.

The fact that there are no sea links with Morocco is a very serious matter which needs to be addressed. Apart from the obvious humanitarian problem caused to pensioners and to Moroccan residents of Gibraltar who are unable to go home to see their families, so it is an economic problem and it is also a very serious human problem but certainly in terms of visitors by sea and in terms of having a ferry, if we are going to have a Ferry Terminal surely the Government would agree it would be a good idea to have a ferry to go with it.

Mr Speaker, the third area will be tourism by air. In his budget speech in April 1998, the Minister for Tourism said, "I am in discussion with several airlines which have expressed an interest in a Gibraltar route and I am hopeful that increased capacity on routes to Gibraltar and new routes will be achieved during the

course of this financial year". There has been no new airline, there have been no new routes despite the promises made. In fact, we have the opposite and again it surprises me that the Minister for Tourism did not mention this but we heard on Friday that we have now lost the Manchester flight by British Airways, that will be abandoned due to lack of demand from October, I believe it is. We have also lost the Heathrow flights and we have also lost flights to Morocco. When he attended the Routes 97 Conference in Oslo, mention was made of British Midland; in the Routes 98 Conference in London, mention was made of having contacted 17 airlines and now of on-going discussions with five. One big problem, Mr Speaker, for hotels and for tour operators is that the cost of flying to Gibraltar is expensive, something needs to be done to address this and packages arranged by hotels cannot compete due to the high fare element. The figures suggest that the Government are subsidising airlines to fly to Gibraltar when the majority of those who use the flights and book the seats actually go to Spain. There is a need to encourage more flights to Gibraltar for Gibraltar stay visitors. The majority of 53 per cent of tourist arrivals by air in 1998 did not stay in Gibraltar. Once again if we look at the latest figures available and we analyse the period February, March and April 1999, the number of visitor arrivals by air dropped from the corresponding period in 1999 to the corresponding period in 1998, there were less people coming to Gibraltar in February, March and April 1999 than in 1998 and the load factor on scheduled flights to and from the United Kingdom has also dropped comparing 1997 to 1998.

Mr Speaker, we move on then to the question of hotels. Despite the money being pumped into hotels, the incessant talk of promotional and marketing success almost every time there is a trade fair or a conference we are told that it has been successful, despite all that the number of visitor arrivals at hotels has fallen by 14 per cent from 1997 to 1998, according to the figures supplied by the Government. This means that whereas, for example, in 1995 there were 45,000 visitor arrivals, in 1996 there were 46,000 visitor arrivals, in 1997 there were 48,000 visitor arrivals, in 1998 there were only 41,620, a drop of 14 per cent of 6,800 people. The Minister mentioned that sleeper nights had gone up. He failed

to mention they have gone up by less than 1 per cent. Despite the huge amount of money spent on hotels, the number of sleeper nights sold in 1998 were actually less than they were in 1995 and are only a 1 per cent increase from the 1997 figure. To the end of March hotels have been paid £450,574 in grants and £2.6 million in loans. At the end of April they owed a total of £926,000. The area of people staying in hotels reflects the failure of the Government's tourism policy more clearly than in any other component part of the tourism industry. It was an express declared intention to encourage longer stay visitors from Britain to come to Gibraltar and stay in our hotels. To that end huge sums of money have been loaned or granted to hotels, huge sums of money are also owed by hotels and the number of visitor arrivals in our hotels has slumped in 1998 compared to the previous year with sleeper nights only marginally up. A percentage occupancy of 43 per cent, which the Minister mentioned, at a time when hotels in the Costa are full is not good enough.

In his budget speech last year, the Chief Minister said, "Hon Members also know that in respect of tourism the Government policy is based on generating greater volumes of economically valuable overnight and higher spending tourism and for that purpose we have led the way by investing in an upgrade of our hotel infrastructure, by investing in the beautification of Gibraltar, by investing in better airline access to Gibraltar and by investing in generating additional level of cruise traffic to Gibraltar". The figures produced by the Government show that the Government have failed to meet all the objectives set by the Chief Minister in his budget contribution last year. In 1998 there were less overnight tourists staying in Gibraltar than in 1997. There is no better airline access to Gibraltar, in fact we have the opposite situation, we have worse airline access with the airport losing out the Heathrow route, the Manchester route and the flights to Morocco, all of which are important. The number of cruise ships that called at Gibraltar in 1998 was less than in 1996 despite the promises made and the exaggerated claims produced. The Government should not get me wrong, those of us in the Opposition want tourism to work and want Gibraltar to succeed in this field but the fact remains that by the criteria set by the

Government themselves last year, that rosy wonderland picture remains a very distant fantasy.

Mr Speaker, I move now to the area of small business and commercial affairs. The Government's approach to commercial affairs and to the needs of the trading sector is very similar to their approach to the tourist industry. They invent a few schemes, they package them and proceed to sell them through the media as evidence of how much they are doing for trade. The stark reality is that the Government have not done enough, that assistance to small business has been misdirected to those who do not need it and that many traders are now in a worse position than ever with crippling overheads being the main problem. None of the schemes introduced by the Government with respect to rents, rates and import duty are measured to see if they are working, to see whether more people are employed, to see whether prices have been reducing. In September 1998, the Trading Conditions Survey produced by the Chamber of Commerce revealed that 68 per cent of business thought that business was the same or worse than the previous year, particularly so in the retail trade where the figure was 81 per cent.

When the Government introduced the import duty restructure in October 1997, they explained that this was as part of Government's policy of stimulating the quality end of the tourist market. The Chief Minister has told the House that the effects of this measure are not being monitored, that the Government have no idea whether prices have gone up or down or whether the objective which was announced in October has been met or not. The Chief Minister said in February that he was not particularly concerned whether it has had the desired effect or not. This is an extraordinary way to conduct economic policy in such a haphazard and almost a shambolic manner. The disregard for the effects of the measure after it was introduced can only make those cynics amongst us lead to the conclusion that the measure was introduced for its propaganda value and for little else. In its Annual Report of September 1998, the Federation of Small Businesses declared that, "The long-awaited import duty review was a great disappointment to most of our members. It was

selective in the goods it favoured and in some cases, as in clothing but not shoes, quite difficult to understand. The majority of our members who trade in ordinary goods were not affected at all. We have asked the Government if they intend to monitor the effects of the import duty review. If the benefits are not passed to the consumer, thus increasing sales which I presume was the intention, it defeats the purpose of the exercise and amounts basically to direct assistance afforded to some but not to others". Mr Speaker, the case is clear. The Government have failed. Small businesses continue to experience difficulties. Perhaps if some Government Members took the time to leave their plush offices and walk up and down Main Street between elections and talk to traders, they would see this for themselves.

Reducing commercial rates by 20 per cent to businesses that are fully paid up has only led to a situation where rich companies that can afford to pay more now pay less and the struggling enterprise that could not afford to pay anyway still cannot afford it and therefore does not benefit from the measure. This point has been made by the two trading organisations in Gibraltar, as was the additional point that a reduction in Government rents has made no difference to the majority of businesses. In its annual review of 1998, the Chamber of Commerce has described these three measures as "far too little to make an impact in our competitiveness and offer. Business costs remain high."

To comment briefly on the new measures announced yesterday by the Chief Minister, obviously time will be needed to analyse them and we need to know whether the Government intend to monitor the effect but certainly there are a number of obvious points which strike those of us in the Opposition when we read the measures. First of all, the reduction in company tax – the small business is defined as a business that makes a profit of £30,000-odd or less. That might not be the most appropriate criteria, we could have a large company making that sort of profit and benefiting from the reduction. Secondly, the same criticisms made on the import duty review then apply now. That the Government should choose to reduce duty, for example, on cameras but not on calculators is, as the Federation of Small

Businesses said, giving a benefit to some but not to others. In terms of the reduction of poundage on rates, Mr Speaker, I think if I am not mistaken when I say that commercial rates are calculated first on the poundage and also on the valuation of the premises. So for this to work and for it to be effective the valuation itself also has to be frozen or has to be reduced otherwise it defeats the purpose of the exercise and the Government will give with one hand and take away with the other.

With respect to European Union funding, Mr Speaker, for business, the obvious point to be made has to be that the wholesale trade and the finance centre are excluded from such funding. There have been complaints that not enough information is generally available. In March this year the Government issued a leaflet on the subject. The only tangible results of this appears to be that less companies have applied for EU funding in the period after February when the leaflet was issued than in the previous period from October 1998. The Trading Conditions Survey produced by the Chamber of Commerce shows that 79 per cent of traders were either very confused or confused on the question of the accessibility of information on the availability of EU funds for business in Gibraltar. The estimates show that the result is that huge amounts of European Union money risks being lost if it is not allocated on time. The EU sets specific targets. Spending on all projects of a capital nature has to be allocated by the end of 1999 and projects of a human resource development nature, like training, has to be spent before the end of 1999. The Leader of the Opposition raised this point in his contribution and we were assured that the Konver funds would all be spent. The forecast on the amount spent in the estimates show that a considerable amount of money is still there. This point of concern was raised by the Chamber of Commerce in its 1998 Annual Report and reassurances from the Government would be welcome not just in respect of Konver. Regarding the Gibraltar Enterprise Scheme, either the criteria is too strict or the details so unknown that few are interested in applying. Of £350,000 estimated in 1998/99 only £30,000 has been forecast as spent which is under nine per cent. In the financial year ending 31st March 1999, only three companies have been successful in obtaining Gibraltar

Government funding with five pending approval and two under consideration. The schemes might very well be there but they are doing very little for small business judging by the amounts actually spent.

Finally, Mr Speaker, during his budget speech last year the Chief Minister promised three things. Firstly, that there would be a tighter control at customs to regulate and control the incidence of cross-frontier trade and to ensure that it complies strictly with legislation. Secondly, there would be amendments to the Trade Licensing Ordinance to require the registration in Gibraltar of businesses including businesses engaged in cross-frontier trade. Thirdly, there would be a continued but necessarily cautious use of the import duty system to promote local trade and therefore protect local jobs. The Government have done none of the three.

In both tourism and commercial affairs, and of necessity the two are linked, the Government have promised much and delivered little. They announce grand schemes with catchy sound-bites and attractive wrapping but 1998 has shown that the important thing is not to be fooled by the propaganda and the presentation and to examine only the contents of the parcel. By that yardstick the Government's performance leaves much to be desired. They spent over £17,000 attending the London Boat Show and we now have less boats. They spent over £13,000 in FITUR and over £88,000 in an office in Madrid and we now have less people, less cars and less coaches coming in through the border. They spent over £40,000 attending the World Travel Market and we still do not have a new airline and we continue to lose air routes. They have spent over £3 million in grants and loans to hotels and the number of arrivals in hotels has slumped. The schemes they have set in place to help small businesses have not worked and much money from Europe risks being lost if it is not allocated soon. They have thrown money around irresponsibly without a feedback and without measuring its effects. Mr Speaker, people were given the impression in 1996 that the frontier problems would be over, that relations with Spain would improve overnight, that Gibraltar would be flooded with tourists spending millions of pounds in our shops and our restaurants. This has not happened, that vision

has failed to materialise. They have spent three years blowing a huge propaganda bubble which sooner or later will burst in their faces and expose the collection of empty promises and the lack of co-ordinated positive action. Never-neverland, Wonderland or Fantasyworld, call it what we will, Mr Speaker, has failed to materialise.

HON DR B A LINARES:

Mr Speaker, my Ministerial responsibilities for Education, Training, Youth and Culture touch upon areas of human, social and moral significance and indeed point to the development of human resources which are crucial in our economic growth. As such, the Government place a high priority on these responsibilities and this is evidenced not only by our budgetary provision but by our on-going evaluation of standards and performances.

Mainstream education – As is known, our educational system is modelled on the British system. The Education (National Curriculum) Regulations 1991 establish that the British National Curriculum should be broadly adopted in our schools and there is no doubt that our educational standards and outcomes can match the best in British schools. This, of course, is the result of longstanding commitment by parents, pupils, teachers, educational advisors and administrators and of Governments over many years. To ensure an on-going improvement in standards, the Department continually monitors the programmes and performances in our schools. This past year, following on the Special Needs Audit carried out by OFSTED inspectors last year, all First and Middle Schools have been visited by external advisors to support practising teachers and enable them to focus on their strengths and weaknesses. Particular regard was paid to the development of literacy at these early stages, that is, Key stages 1 and 2 of the National Curriculum. Staff development ranks high in the Department's agenda. Under the guidance of two senior advisers from Sheffield Hallam University, two important initiatives are currently on course. The first concerns the possible implementation in our schools of the Literacy Strategy

now instituted in UK. All language co-ordinators in our schools are attending a rolling programme delivered by the advisers and all First and Middle Schools will set aside inset time during the next session to monitor those elements of the Strategy which have already been adopted in our curriculum. Similarly the advisers are also conducting a diploma course validated by Sheffield Hallam University for special needs co-ordinators.

Pre-school Education – Pre-school education is now recognised by educators to have a crucial influence in later stages of a child's schooling career. Since we came into office, we have increased the Government's nursery and pre-school provision by 80 per cent. We have opened a new nursery attached to Notre Dame School, a pre-school assessment unit in St Martin's Special School and as from next September, a new nursery for 60 children in Varyl Begg Estate attached to St Paul's First School. This will bring the total number of children now in Government nurseries to 270, that is, over 50 per cent of our annual intake. Parallel to this the Government have also supported privately-run nurseries by providing suitable premises, generous rental arrangements and tax allowances which have been further increased as we heard in this year's budget, for parents who make use of these facilities. Very soon we will be introducing effective legislation to ensure quality standards of safety, hygiene and indeed proper tuition in these private nurseries.

Higher Education – At the other end of the educational spectrum we have our sixth forms and the College of Further Education. The examination successes of our students at this level enable over 40 per cent of our annual intake to enter into higher education in British universities and colleges. These efforts by the students and, indeed, their parents, the Government feel should be generously supported in order to meet the ever-increasing costs of subsistence and lodging in UK. The House is aware of the Government's commitment to pay tuition fees for all our students as a consequence of the British Government's decision to cease payment of these fees and this has meant a heavy bill on our recurring expenditure on scholarships over and above that of maintenance grants, over £200,000 to cover last year's intake

and double that amount to cover two intakes this year, we have estimated £440,000. Nevertheless, Mr Speaker, we have clear evidence that the cost of maintenance and lodging in UK are becoming increasingly onerous for parents in spite of our grants. The Government have endeavoured to keep up with inflation rates in UK over recent years by raising grants accordingly; air travel allowances alone have been increased from £374 when we came into office to £641 today but the substantial increase in maintenance grants which the Chief Minister has announced earlier will be indeed a very welcome and deserving bonus to parents of students in universities and colleges abroad. This increase will have to be across the board within the two income categories defined earlier by the Chief Minister but we are conscious of the abuse of the system by claimants whose real means do not correspond to their income tax returns. I have already taken action and will continue to do so against the more glaring cases by using the discretionary powers which I believe the Educational Awards Regulations 1990 allow the Minister in assessing, as stated in Schedule 3, Part 2, paragraph 3(1), "the total income from all sources". By seeking information, as stated in Regulation 13, "as to the resources of any person whose means are relevant to the assessment of the student's requirements and resources". The Statutory Regulations give further powers to the Minister, as stated in Regulation 14, "To terminate the award or withhold any payments due under it as he in his discretion sees fit". I intend to continue using these powers to the maximum effect to stop the abuse by persons who not only defraud the exchequer with cooked income tax returns but seek to obtain full benefits from the Government on the basis of those returns and in order to strengthen the Minister's elbow legally, that is, I intend to introduce legislation widening the Department's inspectorial role in respect of applicants for scholarship awards.

Mr Speaker, there is another important aspect of a more academic nature that the Department will have to attend to carefully in the coming year. That is, the radical review of post-16 education which is being considered in UK affecting A-levels and General Vocational Qualifications, the GNVQs. We will certainly have to take on board whatever reforms are introduced in UK

since these examinations will determine and condition the entry of our students to UK institutions of higher and further education. For this purpose we are in close consultation with the Examination Boards and with the Department for Education and Employment and we have sought the consultancy of Sheffield University whose pro-Vice Chancellor charged with Inter-Collegiate Studies will be visiting us shortly to carry out a consultation exercise with our own teachers and advisers with a view to recommending the best route to follow in our provision of post-16 education.

Primary education – In primary schooling, as indeed in our secondary schools as well, Mr speaker, quite apart from the academic developments which I have already reported, our aim is to provide well-resourced and well-maintained schools conducive to good teaching and learning. Our extensive refurbishment programme over the last two years at a cost of £1,105,000 has ensured that we now have school buildings which are safe, structurally sound, clean, well painted, pleasant and in most cases suitably enhanced as well with green areas and our budgetary provision this year is intended to see that these high standards are kept up. However, it is not just a matter of money spent. It is appropriate, at this point, to record our appreciation and that of our headteachers of the work carried out by the Government Technical Officer and the Department's Administrative Officer who annually survey the schools' requirements and also the work by the management and the workforce of Gibraltar Joinery Building Services who look upon their task in our schools as much more than just another job. Our biggest problem in the primary sector, from an administrative point of view, continues to be the difficulty of matching the availability of places in the primary schools with the demand in their respective catchment areas. We do believe it is important that these schools be community based and easily accessible to parents and children, particularly in the first schools, but the situation is made more complex by the great demographic movements which have taken place in recent years with the concentration of population in the westside and northern areas of town and this is further complicated by sociological factors such as working parents who increasingly rely on grandparents and

relatives who may not themselves reside in the pertinent catchment area to deliver and collect the children and care for them after school.

The large building extensions in Bishop Fitzgerald and Governor's Meadow complex over the last three years have largely alleviated the situation in the westside area but with the allocation of Edinburgh House and eventually Chilton Court, further schooling provision will indeed be necessary in this part of town. The Government intend to build a purpose-built primary school, that is First and Middle, in the area of NAAFI and Fleet Pavilion once these buildings are transferred to the Government of Gibraltar by the MOD. Similarly the long-awaited and long-overdue extension of St Anne's School which is budgeted in our estimates at a cost of £670,000 is no longer, as it has been for many years, a broken promise. The works which have now commenced are due to be completed by the start of the academic year in September 2000. This will provide the school with a large school hall and six extra classrooms and gone will be those horrid portacabins in the playground. A similar extension at a cost of £200,000 has also been committed by Government for a new large hall in Westside School. It has to be noted that the school population in Westside School is around 900 pupils and up to now they have been using the gymnasium at all times for assemblies, open days and even for public and year examinations with the consequent disruption of the school's sports programme and that of the Sports Department.

School hours – Mr Speaker, I have explained the complex situation caused by demographic and sociological movements as they affect the schooling provision. An added side effect of this general problem is the traffic congestion particularly at the times of day when children start and end school sessions. There is pressure from some quarters to change the present arrangement of school hours with the hope of alleviating these difficulties. The Department is considering carefully all the representations made to it but a change of school hours could have serious repercussions throughout our pattern of social and family life. Essentially, what is being proposed is a shortening of the existing

lunch break and as far as parents are concerned, they understand this to mean that the children will be kept in school for their lunch. Certainly this would avoid the hassle for parents and the traffic problems at this time of day. The views of teachers, as represented to us by the GTA, vary and although the majority want a shortening of the school day, not all appear to agree with the idea of keeping the children in school during the shortened lunch break. The headteachers, on the other hand, are quite unanimous, they are unanimous in rejecting any change of school hours. They are conscious that keeping hundreds of children in school to eat their lunch, however simple that may be, will cause serious logistical difficulties. They point to the fact that our schools at present are not equipped either physically or in terms of supervisory arrangements to cope with this situation. Accordingly, Mr Speaker, I have instructed officers from the Department together with the Technical Officer to carry out a detailed survey of each school to ascertain the physical, logistical and supervisory arrangements that would be necessary in order to retain the children in school for their lunch break ensuring, of course, above all, the safety of the children, general hygiene conditions, healthy diet and good order but it is clear that considerable funding will be required to attain these conditions. When all the evidence is obtained the Government will then decide accordingly.

Personal and Social Education – All our schools give serious attention and time in their curricular programmes to personal, social, moral and religious education. Our teachers are always under pressure from forces and trends outside the school, not least of which is the increasing incidence of family breakdown. A great deal of thought and attention is being given to positive and effective strategies to ensure good discipline in our schools – the philosophy is one of social inclusion and behaviour modification rather than exclusion and rejection and a peripatetic specialist teacher has been engaged to support teachers within the school ambience to cope with difficult pupils often in liaison with social workers and youth workers. The result is that over the last year no single pupil has been indefinitely excluded and the number of short-term exclusions or suspensions has been minimal.

Drugs Education – More particularly, the problem of drug abuse among the young has to be faced realistically, that is, without complacency or exaggeration. There is reason to believe that at all ages the largest single group of young people is that which does not use and has never used an illegal drug. There is further evidence that with the elimination of tobacco smuggling in fast launches, a growing sub-culture at the time among the young, including school children, has been largely overcome. It was a sub-culture closely connected with drug trafficking and drug abuse. However, there is also evidence that there is an escalation throughout the western world in the general availability of drugs, particularly targeted at children and young people and Gibraltar is not immune to this. The Department of Education and Training has now issued a consultation paper setting out good practice guidelines for schools and the Youth Service on drug education and incidence management. Once the consultation process is completed, this paper will be part of a comprehensive policy paper to be issued by the Government on all aspects of drugs in society – prevention, public awareness, law enforcement, drugs trafficking and, particularly, the detection and prosecution of large drug dealing networks. In the preparation of this policy paper, my hon Colleague, the Minister for Social Affairs, is in close contact with the office of the UK Anti-Drugs Co-ordinator, Keith Hellawell and his Deputy, Mike Trace.

The Youth Service – In the battle against drugs, a key factor is to provide relevant alternatives for our youth. The development of the proposed Sports Centre and Leisure Centre will go a long way to address this need and in this context the dedicated work of our Youth Workers in the Youth Service, including the voluntary support of youth leaders in the Youth Clubs and in the Youth Centre is particularly noteworthy. The Youth Service provides a total of five centres for club activities in different parts of town and in the autumn we will see the opening of the new Adventure Playground Youth Club in Laguna Estate. The Club building is now complete with new furniture and new equipment but the contractors are now constructing a new decorative perimeter wall and as soon as this is built we will install new playground

equipment in the area adjacent to the Club premises with new benches and green areas.

The well-resourced Conference Centre in Montagu Bastion that was opened in March 1997, continues to flourish providing the more serious activities, to put it that way, which are also often keenly sought after by young people. The Centre continues to be in great demand also for seminars, conferences and meetings from outside bodies and organisations. This coming year the Government will expand the information technology capability of the Centre with access to the internet, together with a Careers Library in order to provide an effective Careers Advisory Service for young people after they leave school. The patio area next to the Centre will also be refurbished and beautified to make it a pleasant open area near the centre of town, near the new Casemates Square where users of the Centre may be able to relax. Whereas the work of the Youth Service, as I have described, is still largely centre-based, youth workers are now beginning to try outreach strategies to engage a large sector of the youth population who shy away from organised activities and often find themselves prey to commercialised leisure and the drugs scene. We intend to provide in-service training for youth leaders to enable them to adopt effective strategies in this very difficult task. Perhaps, Mr Speaker, it is the Youth Service Annual Programme of international exchanges engaging groups of young people from other parts of the world which carry the highest educational value, broadening, as it does, the perception of our young people. Over the last year trips have been made to Italy, Sweden, Spain and Britain, with reciprocal groups from these countries hosted locally and the first of this year's Youth Exchanges will take place in July when a group of young people from Holland will be visiting Gibraltar and the Gibraltarian youngsters will go to Holland in August. Particularly significant is the link which exists between the Youth Service locally and the Cheshire Home in Tangier. This a Home for young people with physical and mental disabilities. Regular visits by local youngsters are organised by the Youth Office to the Home in Tangier and as well as providing medical and other material resources, the local youngsters often assist in the care programmes and in painting

and refurbishing the Home buildings. Many a youngster's social awareness has been awakened through this opportunity to view at first hand the issues faced by people with disabilities and those who live in communities less affluent than our own.

Co-operation with our neighbours in Spain – Mr Speaker, the House is aware that formal and informal agreements have been made between our Government and neighbouring authorities in Spain to establish means of co-operation in educational and cultural matters. I am very conscious of our responsibility in this respect, it is at this level, especially, which touches upon the minds of the young that we must strive to overcome the attempts of the Spanish Government to sow seeds of division and hatred between the peoples on both sides of the border. I have on previous occasion given full details to the House of all our many contacts with our neighbours of an educational and cultural nature. I will, therefore, here limit myself to highlight a particular meaningful project which has been put together by our educational advisers and their counterparts in Los Barrios – the school children of Los Barrios will be introduced to the historical features of the Rock and discuss their impressions with local children and our school children will share in an environmental educational programme at the Natural Park of Los Alcomocales in Los Barrios. Already last week over 100 children from schools in Los Barrios visited Gibraltar and before the end of term our pupils will be hosted in Los Barrios. Is there not something in the Gospel, Mr Speaker, which is a Gospel of Peace, about all of us becoming like little children?

Training – Mr Speaker, I referred earlier to the Government's ongoing review of our 16 to 19 educational provision. Within this age range and, indeed, up to the age of 25, the Government offer every person the opportunity to opt for one of the following – full or part-time education; vocational training; employment or a combination of any of the above. The aim of the Department since it was assigned responsibility for training, in general has been to achieve a coherent, well-structured and effective framework for learning in all its forms and, in particular, a comprehensive programme of vocational training which responds to the real

needs of industry. To address this wide-ranging project the Government have appointed a Training Advisory Council with representation of employers and unions, the Finance Centre, the MOD and other relevant Government Departments such as the Employment Service and the Department of Trade and Industry.

At an operational level we have created a Training Unit under the wing of the Department of Education and Training led by a qualified Training Officer with two monitors and an administrative officer. Very soon we will also appoint an Administrator for the Institute of Training at Bleak House. Bleak House now counts with a state-of-the-art information technology laboratory which has been partially funded by Reuters and you, Mr Speaker, can take some personal pride in this, I believe. Bleak House now houses the School of Nursing, the School of Health Studies and the School of Tourism and offers facilities for numerous courses, seminars and conferences such as those run by the Chamber of Commerce, the Federation of Small Businesses, the Bankers Association, et cetera. It has also enabled the College of Further Education to expand its programme of professional courses such as ILEX, Institute of Legal Executives; ICOSA, Institute of Chartered Secretaries; ACCA, Association of Chartered and Certified Accountants; and AAT, Association of Accounting Technicians.

I am also very pleased to report that the Construction Training Centre has now obtained accreditation from the CITB, the Construction Industrial Training Board, and the City of Guilds to award NVQs up to Levels 1 and 2 in all the trades and up to Level 3 in bricklaying; Level 3 is the equivalent of the traditional indentured craft apprenticeship. The Centre has received a glowing report from Mr Frank Topley, the Senior External Verifier for the CITB/City and Guilds after his recent visit and assessment of the Centre and if the House would allow me to quote from the concluding remarks in this report; "In general terms the progress made over the last six months has been remarkable. The partnership that is developing between education, training and industry is the model perceived by the Joint Awarding Body in UK. Gibraltar should be very proud of their achievements". I am sure,

Mr Speaker, that the House will join me in congratulating the Director and all his staff in the Department, in the Training Unit and especially the management, instructors, staff and trainees in the Construction Training Centre for this achievement.

We are further assured by the CITB/City and Guilds that in the near future the Centre will be accredited to award Level 3 NVQs in all trades which will then establish it as a recognised Centre of Excellence. This is all a result of the considerable expansion of the building and resources in the Centre at a cost of £163,000 together with the training provided for the instructors in UK which has enabled them to obtain from us non-industrial status and improved conditions of employment as agreed with the Transport and General Workers Union. We are pleased that the morale at the Centre among staff and trainees is high and this augurs well for its future as a key training enterprise supplying the construction industry with a well-trained local workforce. In this respect we welcome also the continued support we receive from the Construction and Allied Trades Association.

Mr Speaker, it is within this global infrastructural framework that I have just described that we have been able to develop, over the last financial year, an extensive programme of training schemes and professional courses and I am pleased to give details of these to the House: The Cammell Laird apprenticeships in fabrication and welding leading to NVQ Level 3, as I said, the equivalent of the old indentured craft apprenticeship. This course is accredited by EMTA, the Engineering and Marine Training Board. A first intake of 20 trainees started in November 1998; a second intake of 20 is due to start in September/October, 10 of these for fabrication and welding, five as electrical fitters and five as mechanical fitters. Construction trades apprenticeships leading to NVQ Level 3 with placements in GJBS and Buildings and Works and assessed by the assessors in the Construction Training Centre; 17 apprentices started in March this year. In the Construction Training Centre traineeships to NVQ Levels 1 and 2 in tiling, carpentry, painting and decorating, plastering, plumbing and bricklaying; 12 trainees in their second year due to qualify in October this year; 16 trainees in their first year having started in

November 1998; a new intake will be selected in June this year to start in September/October. A one-year traineeship at Our Lady of Europa Training Centre for young people with learning difficulties; six trainees on a full-time course; 10 to 12 due to start in September this year; and 12 pupils on a vocational course in Bayside School regularly visit the Centre for work experience. A one-year traineeship in the School of Tourism leading to the City and Guilds International Certificate; nine trainees due to complete the course in September this year; nine trainees who started in January this year; 12 trainees selected out of 28 applicants due to start this week so the total complement of trainees in the School of Tourism is now 30. A six months maritime training course leading to NVQ Levels 1 and 2 involving one month in the Warsash Maritime Centre in UK and five months in off-shore training; this course is accredited by the Merchant Navy Training Board; 10 trainees started in September 1998, another 10 trainees started in November 1998, another intake of 10 trainees is expected by September this year. An on-the-job training scheme for young persons with physical and learning disabilities - individualised training programmes are arranged with various local employers and in liaison with Milbury Care Services; 15 trainees are presently involved. A one-year Business Management Diploma course leading to NVQ Levels 4 and 5 run by lecturers from the Durham University Business School and accredited by the Institute of Management - 20 students in senior positions and middle management started in September 1998; 16 more students started in January 1999; a third intake is being considered given the great interest shown by employers and employees in this course. Durham University Business School is also running, for the Department of Trade and Industry, a Business Development in Action initiative. It is intended for employers of small and medium local business firms to enable them to gain a better understanding of business performance and of their own training needs. The course is supported by the Chamber of Commerce and the Federation of Small Businesses and will run until November this year. The launch took place on the 20th May and was attended by senior representatives, including directors, from over 30 local firms. The training sessions due to start in September are aiming at 10 to 15 companies at a

time. A short course under the auspices of the Gibraltar Bankers Association and the Chartered Institute of Bankers aimed to assist financial advisers wishing to sit for the CEFA 1, 2 and 3 examinations - 15 employees took part in this course. A Business and Technicians Education Council two-year course in electrical and electronic engineering trades leading to the BTEC National Certificate run by the College of Further Education - 25 students started in February this year. A "Welcome Host" training programme conducted by AQS Limited, Associated Training Providers, which my hon Colleague, the Minister for Tourism and Transport, referred to earlier, for the Department of Tourism and the Department of Education and Training. AQS has so far trained eight local training providers who are now licensed to deliver training to employees engaged in customer services - potentially around 200 employees in the tourist and retail trades are envisaged. A one-year basic administration and office skills training course run by the College of Further Education and sponsored by the Chamber of Commerce and the Federation of Small Businesses is due to start in September this year, an intake of 20 to 30 employees in the business sector is envisaged. An on-going programme of short courses on basic operational skills run by Jane Goodwin Associates Group under the auspices of the Chamber of Commerce for employees on a half-day release arrangement with their employers; around 70 employees in local businesses completed the units in October 1998 and over 80 have taken part in the recent April session. The Government have engaged the UK Civil Service College to conduct a comprehensive needs analysis at all levels of the Civil Service in Gibraltar. The survey is well under way and it will form the basis of training programmes for Civil Servants to encourage a culture that will help generate efficiency, motivation and personal and professional development. Ten week courses in basic literacy and basic information technology run by the College of Further Education and offered by the Employment Services to long-term unemployed persons - currently 21 applicants are undergoing these courses. I have earlier referred to the on-going programme of professional courses run on an annual basis by the College of Further Education leading to certificates and professional qualifications validated by different professional bodies in UK -

over 100 students are engaged in these courses throughout the academic year.

In summary, Mr Speaker, it is evident from the account I have given that hundreds of young persons and adults are currently benefiting from our programme of training which we, of course, intend to develop further during the year ahead. The Government believe that the degree of skills development and personal and professional development which must ensue from this comprehensive programme will be of crucial importance in raising the levels of competence and, indeed, of self-esteem of our working people and prove to be a crucial factor in our economic growth.

Culture and the Arts – Mr Speaker, man does not live by bread alone. We know that a culturally sensitive and active community, as demonstrated in other places, not only enhances the quality of life among its own people, but serves as an attraction to visitors from other parts of the world and I am happy to say that there appears to be a renewed vibrancy in various fields of the Arts in our community. This is evidenced in many instances but not least in the increasing popularity of the Spring Festival that we have been enjoying during past weeks; over 30 different events have taken place from 29th April to 30th May. The aim of my Ministry in respect of the Arts, Mr Speaker, quite apart from the traditional funding, has been to provide a coherent framework within which particular groups and individuals may find support, advice and encouragement. In February last year we reconstituted the Arts Advisory Council which had been dormant for many years and the Council has been active in encouraging artists in various fields to associate themselves into collective bodies and organisations to represent their interests, to speak with one voice and to share their own insights and experiences for the benefit of all. I am pleased to report that over the last year we have seen the emergence of the Fine Arts Association, the Arts and Crafts Association, the Gibraltar Dance Association, the Gibraltar Drama Association and the Gibraltar Philharmonic Society. It would be invidious for me to single out any of the many activities and performances organised by these associations during the year but

perhaps I am forgiven if I highlight the impressive successes of our young dancers in international competitions. The Arts Council also believes that it is necessary to stretch the traditional concept of “culture” beyond the more classical expressions and recognise new trends especially among the young. We have therefore supported two very successful musical events organised by the Gibraltar Students Association which attracted huge audiences locally and from the Campo Area – one was SASH and the other by the London-based “Ministry of Sound” which I understand is not situated in Whitehall. The Ministry of Culture will no doubt be heavily involved in many of the activities and events connected with the Millennium celebrations. It is intended to dedicate some space in the new Museum at Casemates to a permanent Art Gallery which will display the works of local artists of repute such as Gustavo Bacarisas and Jacobo Azagury, together with paintings also by contemporary local artists who have gained recognition and acclaim. The genuineness of the Government’s commitment to the Arts is further demonstrated by the large amount of capital investment that we have made and continue to make in order to restore the physical structure and conditions fabric of our cultural institutions. Over the last financial year and by the end of the present financial year we will have spent £272,000 on repairs and refurbishment at Ince’s Hall and John Mackintosh Hall. We found Ince’s Hall when we came into office, in a disgraceful state of neglect and disrepair. We have now constructed a totally new roof, painted the exterior façades and painted and refurbished the interior of the Theatre including the back stage and the dressing rooms; installed new electrical and electronic equipment and laid a new carpet. We have also extensively refurbished and restored the adjoining premises providing a new rehearsal room and new offices for the Ministry of Culture. At the Mackintosh Hall we have carried out extensive repairs to the roofs as well, installed a new fire curtain – I can assure the Opposition Member of that – we are currently constructing a lift for the disabled and a toilet with facilities for the disabled and we have substantially increased the stock of new books in the library collection.

Mr Speaker, as already announced elsewhere, the Government have identified the restoration and reopening of the great Theatre Royal as an appropriate project to commemorate the Millennium. The opening of the Theatre in the year 2000 will be, I reckon, a historical landmark symbolising, in a way, our community's regard for our cultural heritage and our traditional devotion to the Arts.

The New Millennium – Mr Speaker, I have had the privilege of chairing the Millennium Committee assigned by Government to plan ways in which our community may suitably and meaningfully mark the close of the Second Millennium and celebrate the start of the Third Millennium. I want to record here my grateful appreciation of the thoughtful and sensitive work done by the Committee which has enabled now the Government to draw our own plans and announce a comprehensive programme of important projects and events. I think it all augurs well for our people's passage in spite of all our difficulties into the New Millennium, highlighting above all, that spirit of community and those common aspirations that should transcend all other differences between us.

In conclusion, Mr Speaker, please allow me to express my gratitude to the Director of Education and Training, his senior officers and all the staff in the Education Department; in the Training Unit; in the Department of Culture, and in the Youth Office for their loyalty, their hard work and their friendship to me personally and their good humour in very often putting up with me.

Finally, Mr Speaker, I want to thank you and all Members of the House for the attention given to my report on my Ministerial aims and objectives in Education, Training, Youth and Culture. I now commend to the approval of the House the items of expenditure under Heads 1-A, 1-B, 102 and Appendix B of the Estimates of Expenditure 1999/2000.

HON J J GABAY:

Mr Speaker, first I would like to congratulate the Minister for his prolonged narrative on continuous progress and success, hardly leaving any scope for any criticism. Be that as it may, we are here, like Anthony, to bury Caesar not to praise him.

I would like to ponder briefly, as I did on previous occasions, on some salient points which I emphasised in my budget speech last year. No one in this House, and few, if any, outside it, would begrudge money spent on education or training when spent wisely. As a community we have a rational and emotional concern for the welfare and progress of the young. It is fair to recall, as I have done on previous occasions, the GSLP Government's established and maintained a liberal policy of financial provision in accord with this communal ethos. This trend is now organically rooted. Symptomatic of this is the fact that whereas in the United Kingdom university students will no longer receive free tuition or maintenance grants, our students will not be subjected to such financial burdens. Equally so we welcome the decrease in parental costs for University Maintenance Grants. In this, Government and Opposition are obviously at one. The overall budget for the year 1999/2000 is estimated at £15,066,000 and would appear to reflect the pattern of increase in relation to the previous budget of £14.1 million. However, the figures for Training under Head 1-B and Appendix B will require some explanation and I will deal with these matters subsequently.

Mr Speaker, for all their euphoria and relentless reference to philosophy, this Government have made no meaningful impact on the education system. Of course, if one were an avid fan of the media – and we saw the media well represented here by constant reading in the course of the morning – or the plethora of Government press releases, one might well come to believe that this Government have invented education. In fact, our educational system has long roots structured on the English framework, as referred to by the Minister, but much credit is due to successive Governments, former Ministers of Education, Directors of Education and the many dedicated teachers throughout a fairly

long process. In this process, as I have said before, the contribution of the Christian Brothers and the Loreto Nuns are important landmarks. Those few of us who attended, last week, the Memorial Mass for Brother Taylor recalled a truly meaningful educational legacy.

Mr Speaker, the Minister for Education, in answering questions in this House rarely shows signs of positive views in matters of policy. This is generally substituted by belated fragmentary initiatives accompanied, no doubt, by media orchestration. When I have raised current issues in this House such as classes in civics, literacy strategy schemes, school hours, reform of Six Form studies, to mention but a few, the response is either that they are being studied or else they are not needed. This is why I found it very interesting to hear the Minister talk now about experts coming to advise on literacy strategy. When I first raised that point in this House I was told that there was no need, that things were going fairly well and that Government were satisfied. When one thinks of school hours, a similar situation; "We are still studying the issue", after such a long time. When I raised the matter of school lunches, where we had rather strong controversy on the matter, the Minister actually said that they were unnecessary, now an in-depth study is going to be made as to whether it is possible or necessary. This business of prolonged sitting on the fence or instinctive dismissal of suggestions may be good politics but it is certainly not good education.

Mr Speaker, in a brief interlude, allow me to comment on the Chief Minister's contribution to last year's budget. Incapable or unwilling to listen to anyone, all interventions by the Opposition were branded in the following words. "Their so-called highly technical economic critique of the budget has really been little more than a frustrated accountant's nit-picking". Clever words but nothing more than clever words. In sarcastically praising the previous Government for the accumulation of reserves, he added, "They also have to understand, the opportunity that they got to accumulate that money from an activity substantially funded from an activity which the hon Members will understand the Government have decided is not in the long-term interest or

indeed the short-term interest". I do not want to ponder too deeply on that fact as my hon Colleague, the Leader of the Opposition, has already made a few pertinent comments on that, from a moral angle it would appear that when something wrong appears on the surface it is to be condemned so long as it is tacit, it is acceptable and the communication from the Opposition to the Government is usually conducted until this session by not even understanding of some resources of revenue in the import figures. I feel confident that the Chief Minister is in no doubt as to what I might blurt out on the subject if the discussion on the subject continues. In any case, because we shall have no doubt of repetition of attitude by the end of this budget session, all points made by the Opposition – and I mean all – were discarded, and I quote his words as "nonsense" or "factually unsustainable". In respect of my proposals on education, I was spirited by the Chief Minister into a phantom world and more recently, in another of his favourite clichés, banished to the planet Mars. Well, we all know the importance of provocative exaggeration in the verbal armoury of the Chief Minister. No doubt, presumption and pretence will again be the norm. It already started towards the end of his initial contribution and no doubt will escalate when the summing up comes so to pre-empt that I think these comments are apt.

Mr Speaker, we in the Opposition have a constitutional duty to probe into Government actions, policies and expenditure and we shall pursue our role relentlessly even if less handsomely paid than the self-salaried Chief Minister. Regrettably the technique institutionalised in this House by the Chief Minister and pandered to by some but not all his Ministers, is to substitute logic by denigration and clarity by vilification. Thus, consistency of policy is reduced to tactical contradictions with all their ill effects. The question of confrontation has important economic links. Let us analyse the concept of confrontation in relation to the present leadership. A major premise in his ascent to power was the elimination of harmful confrontation which, according to him, was the hallmark of his predecessor. So let us calmly assess where we are today.

MR SPEAKER:

We are talking about the budget, no?

HON J J GABAY:

Yes, this is why I proceeded.....

MR SPEAKER:

All right, carry on.

HON J J GABAY:

Mr Speaker, with all due respect, we have listened to a long narrative as well that had little relevance to the budget. As for reading, we have all read despite the instructions although I am grateful to you for your usual leniency.

So let us calmly assess where we are today in the eradication of this problem. In inter-party relations he has created a degree of bitter animosity unknown before through the arrogant exercise of power. In relations with Spain, which has an economic link, unable or unwilling to understand the merits of a consistent approach, he believed that once his predecessor was out of office he would be able to make inroads with the Spanish Government. The expectations he created have failed dismally. Having hailed Matutes as a gentleman, not to mention the fishermen, he ended up calling him a liar. The frontier restrictions are now blatantly imposed in a manner unknown since the days of Franco and Spanish policy has consequently hardened encouraged by his leap from eclectic charm to personal irritation. No degree of so-called regional co-operation will obscure the harsh reality. In relations with the United Kingdom, I believe there is also greater real confrontation than ever before; the only difference is that there is an attempt to hush it up. All warnings given from the Opposition have been discarded rudely as alarmist only to be proved right as time goes on. It must be very comforting to the Foreign Office to hear the Chief Minister say publicly that he does

not engage in battles which he cannot win. How easy it was made for the United Kingdom Government to talk about the Spanish dimension and for Cook to shoot down integration and free association over a drink with the Chief Minister. We are today, preamble or no preamble, in a weaker position, more than ever caught between Foreign Office appeasement and Spanish Government bloody-mindedness. It has taken Dr Marek to warn us not to take "no" for an answer so easily. This way we shall all end up being the willing sacrificial lamb under the defeatism of force majeure.

Mr Speaker, in the sphere of the environment and heritage, we have raised quite a number of issues in the course of the financial year. When Government eventually brings to this House the long-awaited Bill for the amendment of the Gibraltar Heritage Trust Ordinance 1989, as well as their plans for the approach to possible World Heritage, we shall get a clearer picture of Government policy. I have already sincerely congratulated the Minister for Heritage for his work in steering the Rock towards this status. In the meantime let me say that although the beautification of central areas of the town is welcome, the neglect of the upper town is equally disgraceful. Let us remember, apart from our duty to residents, that the many Steps, Ramps and Alleyways have been described by famous architects of English Heritage as ranking amongst the finest in Europe for the layout and picturesque quality, if sensitively restored. The projected demolition of the old Generating Factory or whatever we want to call it so that we do not quibble over the name, over which I have argued with the Chief Minister throughout the year if not longer, is good news. On the negative side, the destruction of Lover's Lane and the periphery wall of the Convent are regrettable. Pity the Chief Minister did not share the romantic associations of the many, as we recalled at the time, or the sound counter-arguments put forward. In any case, whether the widening of Lover's Lane helps to solve our traffic problems remains to be seen. Furthermore, if traffic flow was the main consideration here, why is the same principle not applied to Casemates Square where cutting access is becoming such a nuisance to everyone? Then again, the insistence of the Government to rebuild at the northern

end of Rosia Saluting Battery Promenade is quite against any sensible policy of providing open spaces for recreation and putting into relief the City Walls. In retrospect, such schemes will be seen as costly errors of judgement if we believe in the premise that our unique architectural and natural heritage is to become our finest attraction for visitors in contrast to the Costa del Sol.

Mr Speaker, this brings me to the subject of our natural heritage and our wider commitments in this field. The personal agreement made mandatory by the Chief Minister, entered into with a rebellious rabble of Spanish fishermen had dual repercussions. On the political front, it was a brazen breach of the rule of law, an unconstitutional affront to the legislative process of this House and a futile surrender to the forces of violence. On the conservation front, by calling the Nature Protection Ordinance "that wretched law" simply because it stood in his path of concessionary caprice, the Chief Minister added insult to injury and undermined the international commitment entered into by the Gibraltar Ornithological and Natural History Society. Gibraltar had earned a well-deserved reputation, regionally and internationally by its forward-looking adherence to conventions and directives. The erosion of marine life in our waters will continue unabated by the work of Spanish rakers. The ironic remnant in fact of conservation will no doubt be the occasional fining of some innocent Gibraltarian for catching a stray crab.

Mr Speaker, in respect of training, we argued against the transfer of training from the Employment Ministry to the Education Ministry. We believe that training and education each benefit by being kept under the previous umbrellas. Without minimising what they may have in common, the methodologies are different and the targets are different. The influence of one over the other can be detrimental. The fact that in the United Kingdom, whatever other evidence the Minister for Education has given, they are now under one umbrella should not necessarily restrict our thinking on the subject. He may have found it interesting to note as well as I have, that the Chief Education Inspector in the United Kingdom, assessing the new Sixth Form reforms has severely criticised the introduction of modular courses into Sixth Form studies and

exams. I share his view that the modular approach is eminently suited to the NVQ's but not to the 'A' levels. In fact, he predicts that this interplay will erode the academic and intellectual quality of the 'A' levels.

Mr Speaker, training for employment is indeed crucial. To be young and unemployed is a distressing condition that is often accompanied by an intense feeling of worthlessness and rejection. In theory, we share the same basic preoccupation as the Government do; in practice, we must differ from the Government's approach.

In an interview given by the Minister on 25th January, and much of it has been repeated today, he proclaimed that he was meeting the Gibraltar Training Advisory Council, then recently set up, in order to establish a comprehensive global training needs programme for Gibraltar, properly surveyed and identified, by professionals in the field. In elated language he forecast that this year would see a radical transformation in the training scenario locally which will see structured courses at all levels. Mr Speaker, the School of Tourism was to be the spearhead of this radical transformation. Even though I have argued my point in this House and even though I have written to the press on it, I would nevertheless go over it again because it is extremely important and symptomatic of the difference between publicity and reality. Mr Speaker, if I were to be cynical, I would rename the School for Tourism with a better known literary title, well-known to all, the School for Scandal. The idea itself was laudable and I said this in this House. However, I expressed serious reservations on financial and recruitment grounds as well as on the impression made by Julia Sibley on television with her talk of fun, treasure hunts, and the repeated use of the uncritical word fantastic. If we bring experts of this quality who can publicly talk in this manner, I for one am not impressed. To begin with, it is pretentious in the extreme to call a restricted course on hotel tasks a School of Tourism and I note from the Minister's long narrative that every course now is called a School. I think Bleak House will have to develop into gigantic proportion in order to be able to include so many Schools, it would have been more reasonable to say we are

running courses for this and courses for that. I think by calling them Schools, like this one a School of Tourism, really is presumptuous and really depressing. In some ways, creating the wrong expectations. It is really an obvious misnomer. I put it this way because this is how it seems to be, that political one-upmanship on the one side and sharp salesmanship on the other, hastily blended, became more important, in fact, than objective research and guided motivation. That is my view and feeling as to why there was such a dropout rate.

The cost was totally out of proportion. Worked out on the figures given at the time by the Minister for Tourism, if we are left with nine which is what we had in the last count of the first intake, then it is costing over £12,000 per capita. So it is obviously clear that the dropout rate is worrying, this is a reality and the cost quite out of proportion that is also an indisputable fact yet what is absolutely worrying in respect of the Government attitude is they did not give convincing arguments which would have made us more sympathetic, there can be experiments that take some time but one can only improve them if one had the modesty, in the first instance, to accept that something has not worked well. But look at the reaction of the Government when we raise this subject and I have repeated it of course in the press. The Minister for Education confronted with these facts stated, "This is a great success." And the Chief Minister followed suit with, "Even if one trainee remained it would still be worth it". I really sincerely hope, Mr Speaker, that this is not the criteria that is going to be applied to the proliferation of Schools that have been mentioned by the Minister for Education. Mr Speaker, why add anything further on this point other than we would like to see the project succeed, what we cannot accept actually is this sort of blind propaganda superseding performance. This we cannot accept, we are here to question that sort of thing not to condone it.

Since so much has been made of training, I would like to raise a few points to do with the budget. Mr Speaker, with reference to the vocational cadets, the contrast between Government estimates and the actual or outturn expenditure make interesting reading. In 1997/98 there was an estimate of £1.8 million and the

actual, in fact, was £1.1 million, a difference of over £600,000. For 1998/99 the estimate was £1.1 million which already shows that they were on target and yet the outturn was £536,000, again another drop of £564,000. The 1999/2000 estimate comes down to £600,000. I do not claim to be either a financier, an economist or an accountant and I may be wrong in my comments, I hold them to question, but the successive lowering of the estimates seems to reflect clearly unachieved targets and perhaps complacency in adapting to those unachieved targets. Let us assume that a payment of £3,000 per trainee is made and on this basis allow me to illustrate the point my way. In 1997/98 the £1.8 million estimated would have provided funds for 600 trainees. The actual expenditure reduces the number of trainees by 200 down to 400. In 1998/99 the £1.1 million would have provided funds for 400 trainees. The outturn expenditure reduces the number of trainees to 200. The 1999/2000 estimate, the actual one, is £600,000. Is this meant then to provide for 200 trainees and are we not entitled then to ask questions as to what is happening with the vocational cadets? Why are the estimated targets not reached? Why are the Government complacent enough to continue to reduce to the outturn? These are questions that would require some answering. Furthermore the same pattern of unachieved targets is reflected in other areas of Appendix B. For the year 1998/99, for wage subsidies the Government spent £200,000 less than estimated; in the Construction Training Centre £90,000 less than estimated; for Training and Development Courses £341,000 less. All these details obviously appear in Appendix B on page 114.

Mr Speaker, there is another thing that has drawn our attention in respect of the College of Further Education fees which is on page 11, Head 6 and comes under Consolidated Fund Revenue. With regard, in fact, to the revenue of the Consolidated Fund from fees payable at the College of Further Education, we note a decline in three successive years of estimated revenue from £100,000 in 1997/98 to £22,000 in 1999/2000. Again we see this pattern of a serious discrepancy between the estimate and either the actual or the outturn result. I think it is pertinent to ask what is the reason for this decline in revenue in these courses. Is it that they have

been transferred elsewhere and therefore appear under some other Head? Is it that there is a real decline in demand for the courses offered and so on? I think that is again an interesting question that I think requires some degree of explanation.

Coming to the question again of the Consolidated Fund Revenue for Adult Education Fees, I presume they are the evening classes, again we note the same pattern of decline in both expectations and fees generated. The 1997/98 estimated revenue was £30,000 and the fees collected were £17,328, a drop of over £12,000. In 1998/99 the estimated revenue was £30,000 and the fees collected went down yet again to £15,000, a 50 per cent drop. This year, 1999/2000 the estimated revenue is £15,000. Again I feel this requires some explanation. Is it that the charge for such classes have been drastically reduced or is it the failure of the Government to generate the required numbers as based on their estimates?

Mr Speaker, there is also the question again under Appendix B of Payments for Training and Development Courses. Again we have the same confusing discrepancy between estimates and outturns. In 1997/98 the estimate was £1.2 million and the actual was £233,741, almost £1 million in difference. In 1998/99 the estimate was brought down to £811,000 and the outturn, again almost half, £470,000. For 1999/2000 we have £800,000 estimated expenditure.

HON DR B A LINARES:

If the hon Member would give way. A very simple explanation.

HON J J GABAY:

I would rather finish.

MR SPEAKER:

He does not want to give way. In point of fact, at this stage it should only be principles, how well they have done and how bad you think they have done and then we go to the Committee Stage and you can ask the question you are asking now.

HON J J GABAY:

Mr Speaker, in respect of receipts then by the Gibraltar Development Corporation, from the European Social Fund and the training levy for training purposes, the position becomes even stranger. If we just consider the estimates for 1999/2000, the Government hope to raise £2 million from the training levy and £1.8 million from the European Social Fund. That is a very substantial amount of money to dedicate to training. At the same time we note with some concern the £1.1 million to be reimbursed to the Consolidated Fund. Without going into further detail, the Government seems to have instituted a system whereby the ETB has to reimburse the Treasury for previous monies spent on training. We want to identify the exact flow of the cash from the European Union Social Fund into which precise training projects it is going. I will not labour this point further now since my hon Colleague, the Leader of the Opposition, has already given an exposé of the situation with his usual accuracy.

Mr Speaker, a few words on the costly recruitment of visiting or part-time or permanent experts from abroad. Again no one questions the need for expertise from overseas on some occasions and of course in some areas. However, the avalanche of imported experts and their blueprints is quite astonishing. It is virtually a renaissance of the old colonial mentality that the expert was revered not for his expertise but for his provenance. Schemes often ill-conceived are presented as ideal, we have seen that already. Supposedly we are told they bear the stamp of authority, the experts note and I must say that in our case the range of experts runs from the sublime to the ridiculous. I find it amusing and I am being very frank, I found it amusing to note that the Government had brought in paid experts to teach civil

servants the great complexities of attending to the public. I would have thought, given the relatively small size of local departments, that it would be the run of the mill duty of any Head worth anything. When one goes into a Government office one can tell whether the Director and the Minister are in control, there are cases where they are and it is a pleasure to be attended to and to go into it and there are others which are not. It is not because one has been subjected to a course of customer service and the others have not, it is a matter of control and imposition of basic things that we all know and we do not need to pay the experts to come and illustrate that for us. Furthermore, Mr Speaker, given the substantial amount of money spent on university education, per capita it must be one of the highest anywhere, it seems strange that such little local expertise should exist. Perhaps we are now regressing to the old colonial era when we were, in fact, educating for export. The fact is that this Government are more concerned with image than with substance, more concerned with ostentation than achievement and keener on impact than on fact.

Mr Speaker, the promise to open the Theatre Royal is pleasing. It has been hailed as a Millennium project and I sincerely hope that it does materialise. My only fear is that it might not in the same way as the University that appeared prominently in the GSD manifesto of the last election and then for four years it has really faded and petered out. Interesting word that "petered" out!

Mr Speaker, just a couple of points, if you would bear with me. We are happy to hear from the Minister of Bruce's Farm and the conversion and use of it as a Drug Rehabilitation Centre. However, there are a couple of points. One point I would like to make is that this House should express its appreciation to Joe Caruana who for 15 years filled a gap that nobody else seemed to be attending to and I think that this would be very, very appropriate if we were to pass a vote of thanks for his 15 years work. The thing that worries us and perhaps it may well worry the Minister as well, is that even before the Centre is in operation there is circulating around town and coming from rather important sources, that there is already a major dispute between the medical profession and what they call the dictates of the

Department of Government involved in its creation and development. I hope sincerely that this does not in any way affect what is a very noble project, naturally as in the case of Bleak House which we shall reserve our judgement once we see it in operation and try to help as much as we can in a constructive manner. Well, Mr Speaker, I think that is all, I think you have had enough of me, thank you.

The House recessed at 12.35 pm.

The House resumed at 2.30 pm.

HON J J NETTO:

Mr Speaker, as Minister for Employment and Buildings and Works, I should first like to turn to developments in the Buildings and Works Department. Over the last financial year the department has continued to consolidate and improve the systems introduced during the previous year in order to increase the productivity of the workforce and to provide a greater degree of efficiency and transparency in the management of the department. These systems and procedures have resulted in an improvement in the organisation of the department. An assessment carried out in September 1998 by an international certification body of the Quality Management system was successful and the department was awarded an ISO 9002 Certificate, the first Government Department to obtain such an award.

The incentive scheme agreed with the Union has continued to operate and many of the initial teething problems have gradually been ironed out. The scheme has generally been accepted by the majority of the workforce and this has resulted in an improvement of morale and an increase in the productivity of the department. For this reason the sub-head for bonus payments has had to be increased for the next financial year, the one that we are now debating. The department is now responding to a greater number of requisitions for minor repairs and is also carrying out planned maintenance in a number of Estates. It is difficult to quantify the

increase in productivity given the lack of records and accountability that existed in the department previously, something which was highlighted on a number of occasions in Principal Auditors Reports. However the feedback obtained both from the supervisory staff at the depot level and from our regular meetings with Tenants Associations, is that the performance of the department in responding to the needs of the tenants has improved over the last two years. Notwithstanding this there is still a long way to go towards eliminating the tremendous backlog of major maintenance work which is still pending.

In order to make some inroad into this backlog the Government, with the conformity of the Union, decided to contract out some of the major works which have been outstanding for a long time. Work has commenced on the replacement of the balconies of MacFarlane and Willis's House and the re-roofing and general repairs of Godley Mansions. Work will also be commencing shortly on the replacement of the balconies of Sandpits House and Anderson House. Additionally 10 pre-war flats have been refurbished by contract. The Department is also considering other works which can be put out to contract including the beautification of Glacis Estate and the provision of new bin stores and additional parking at Laguna Estate. However, with only one Contracts Officer employed, the number of contracts the department can handle at any one time is limited and we are dependant on the services of other departments. This service is sometimes not forthcoming because of their own commitments and we have had to engage consultants in order to prepare drawings and contract documentation.

The department has made a large investment in plant and tools by purchasing £46,922 worth of equipment during the financial year 1997/98 and providing £26,000 during the current financial year. A further provision of £27,000 has been made in the draft estimates for financial year 1999/2000. This has resulted in a decrease in the dependency on hired equipment. We continue to record the issue and return of all hand tools in order to exercise control over these items.

There has been an improvement in the department's fleet of vehicles, with the addition of six small pick-up vans and one six-seater pick-up. We were also given three lorries but these were not suitable because they were not tippers and hopefully they will be replaced soon. These additions have improved the quality of our transport enabling us to meet the department's requirements without having to resort to long-term hiring.

The department has continued to invest in computerisation in order to up-date its systems thus making the processing of data quicker and provide management with the necessary information to monitor and assess productivity levels. The Reporting Office at Ragged Staff has been linked by modem to the Main Office, soon it will also be linked to the three depots so that requisitions can be passed quickly to the appropriate depot thus reducing our response time.

It is envisaged that the Reporting Office will become the central reporting office for all Government departments and we are currently examining, with the help of the Information Technology Section, ways of expanding and improving the system, so that it can cope with the increased workload.

The regular meetings with the Committees of the various Tenants Associations have continued to be held in a frank and open manner. This has resulted in a better working relationship being established which has fostered a greater understanding of the problems faced by both sides. A customer satisfaction survey was conducted and the response was encouraging, although a number of shortcomings were highlighted. The majority of the replies were positive and expressed a degree of satisfaction with the service provided.

One of the areas which the survey identified as needing improvement was the telephone response service. This has been addressed by the introduction of an answering phone system, which now ensures and enables tenants to record their report and staff to respond in due course. Customer Satisfaction Surveys will be conducted periodically to identify ways of eliminating our

shortcomings and improve the service which we provide to the tenants.

In consultation with the Tenants Associations the Government are exploring avenues aimed at ameliorating the parking problems experienced by tenants in the Government Estates. Legislation is being prepared to restrict parking at Glacis and Laguna Estates to permit holders only, whilst in Varyl Begg individual parking bays are being allocated to residents of the estate. Government are also considering the possibility of providing financial assistance by means of soft loans to enable tenants to purchase their own parking spaces if these are available in the vicinity of the estate.

The department is hoping to put out soon a tender for a thorough beautification project at Glacis Estate. This will encompass the repaving of the Estate and the embellishing of such. With regard to Laguna Estate, we will provide further parking spaces, along with new bin stores and general beautification of the estate.

We have continued our on-going training programme and during the last financial year two more Work Supervisors have attended management courses to improve their managerial skills. The Departmental Safety Officer also attended a course on Health and Safety to ensure that the department keeps abreast with changes in the legislation and complies with the law. Additionally we are in the process of conducting an in-house series of seminars on Customer Care and Awareness aimed at improving the ways in which our first-line staff respond to complaints from tenants.

The strict financial controls which have been exercised in the payment of wages and bonuses and in the purchase of materials has led to an increase in the overall productivity of the department, which continues to improve the use of its resources in order to achieve value for money. This has resulted in that for the second year running, the expenditure of the department has been kept within the limits set by the Government Estimates of Expenditure, and supplementary funds have not been requested.

Finally, as stated in my previous report, although much has been achieved there is still a long way to go to iron out the deficiencies in the system. The department is conscious of the need to continue to improve the service it gives to Government tenants and to better its image with the public at large.

Mr Speaker, I should now like to turn to the work of the Ministry of Employment, commencing with the issue of Government assistance in stimulating employment and the creation of jobs.

Following my budget speech last year, the Hon J L Baldachino chose to accuse me of not having produced any improvements and of having failed to state what I intended doing in this respect. Obviously, the hon Member had his own budget speech prepared beforehand and was not willing to change it, no matter what I said, or otherwise, simply chose to ignore what I said.

Government spending this year in terms of wage subsidies, as was the case last year and the year before, for that matter, has been prudent and contained in an effort to maintain wage subsidy levels in tune with real demand and long-term sustainable employment; in difference to the pattern set by the previous administration of wage subsidies at whatever cost, totally uncontrolled and irrespective of employment sustainability, simply in an effort to reduce the unemployment figures. This Government are not prepared, never have been, to subsidise, at the taxpayer's cost, employment of the latter sort.

Similarly, in terms of the Vocational Cadet Training Scheme, it has been the policy of this Government to contain spending in an effort to assist in true and genuine job creation and not foster cheap labour practices that past abuse of the Scheme gave rise to.

Whilst on the Vocational Cadet Training Scheme, which this Government had announced they would change, I can inform that the Government have had second thoughts about it and will now not be changing it; instead, it has been scrapped with effect from 1st June.

The Opposition Member may wish, yet again and to maintain the tradition, insist that I have not produced any improvement. However, he must surely note that despite having revoked the infamous July 1st rule; despite openly advocating and implementing a policy of equal employment opportunities for all locally resident EU nationals, as our EU obligations determine and as the Leader of the Opposition voted in favour of in 1972; despite having significantly enhanced the employment opportunities of our long-term resident Moroccan nationals, now to enjoy total equality of opportunity in access to the labour market, I may add; despite the control and containment of wage subsidy and Vocational Cadet Training Scheme spending, which the Opposition may wish yet again to criticise; and despite the Opposition's relentless scare-mongering tactics of "foreigners taking our jobs" campaign, despite all that, unemployment figures, much to the Opposition's dismay, have not increased, but are in comparable levels to 1996. However, this is not a Government prone to launching ourselves in 'dare-devil' or 'at whatever price' manner into strategies that can have a negative impact on our community. We have consistently stated our employment assisted strategy and to its effective implementation, I can now announce in concrete and tangible terms the main package of measures that are now being progressively implemented. As already stated, the 1st June has seen the termination of the Vocational Cadet Training Scheme. The scheme had for long now been no more than a wage subsidy scheme as opposed to any kind of intended vocational training measure. Worse, the Vocational Cadet Training Scheme had provided a full wage subsidy, since the employer was not obliged to top up the so-called 'training allowance' to the going rate of wage or salary for the job. The scheme had led many youngsters into employment of sorts, temporary employment, that is, while Government paid the wages, with a total absence of training or any degree of transferable skills. The training allowance must have been in the good majority of cases the attraction for our young people.

If it is vocational training that is to be offered, as indeed this Government so wish, then it ought to be clearly and purposely devised as such and as in fact presently being delivered by the Education and Training Department and which my good Colleague, the Minister for Education and Training has elaborated on. Wage subsidies there will be, of course, not for under 18s though, as had been in practice, the case with the Vocational Cadet Training Scheme. In great difference to wage subsidies of the past, which have not had in-built safeguards for the guarantee of longer term genuine and sustainable employment, our new wage subsidy measures will contain such safeguards and will deter and impede the past common practices of dismissing the wage subsidised employee as soon as the end of the wage subsidy period was approaching. At the same time, the financial incentive for employers by way of wage subsidies will be enhanced. And, of course, such wage subsidy measures will be directly aimed at assisting the long-term unemployed, that is those who have been out of work for over six months, back into employment. Two wage subsidy measures are being introduced, each one specifically aimed at the long-term unemployed. The first wage subsidy measure is aimed at assisting those persons who have been continuously unemployed for more than six months but less than 12 months. In such cases, employers will be able to claim £60 per week for 26 weeks and a lump sum payment of £1,500 at the end of the fifty-second week of employment of the wage subsidised employee. In similar manner, the second wage subsidy measure, aimed at assisting those persons who have been continuously unemployed for more than 12 months, will offer employers a wage subsidy of £90 per week for 26 weeks and a lump sum payment of £2,000 at the end of the fifty-second week of employment of the wage subsidised employee. It is envisaged that these wage subsidy measures will attract European Social Funding.

Similarly, other innovative employment assistance measures, tried and tested in the UK, for example, and aimed at employment placing will also be similarly announced.

Of course, in helping unemployed persons back into the labour market, effort will be on concentrating in assisting those unemployed who are genuinely seeking employment and not merely registering as unemployed in order to continue receiving state benefit. This is a reality which this Government are not prepared to shy away from and which we are prepared to challenge, tackle and correct. The introduction of a job seeker's agreement, and which I will refer to in greater detail later, as already announced and on which much work and effort has been put into by the Employment Service staff of the Ministry will have its details announced shortly and incorporated into the Employment Service's job seeking assistance measures.

Allied to all the above, dedicated premises have been secured and set up adjacent to the Job Centre in order to provide Job Club facilities for the unemployed. Staffed by two counsellors, posts already advertised and selection now in progress, the Job Club will enable the provision of services to the unemployed never before available. Every possible job-seeking assistance will be afforded and employability prospects enhanced through a far more client-centred, more dedicated, individualised and formative programme.

It must also be stressed that, as anticipated last year, liaison work with the Ministry of Education and Training is already showing results. Last April, two initial pilot schemes were launched, aimed at providing the long-term unemployed with relevant skills that will help them get back into work. These schemes are under review and will constitute the start of a more structured programme in the long term.

Mr Speaker, the Government's approach to employment matters generally is consistent and in tune with European thinking and is determined by three main pillars, namely:-

- i) Help to business;
- ii) Flexibility and adaptability to labour market conditions; and

iii) Fairness at work.

In relation to the first, obviously the most important moves are initiatives led in the main by the Chief Minister, or the Minister for Trade and Industry. Both have, in the past, alluded to various reviews and initiatives taken. These include, amongst others, fiscal changes such as tax cuts, rates incentives, import duty restructure and rent cuts on the one side, and support advice and assistance to existent and new business through DTI on the other, not to mention the important aspects of marketing and the beautification of Gibraltar in order to attract investment with the prospect of employment that this brings.

Further new initiatives have already been announced by our Chief Minister in his address and go to show the extent to which this Government are in tune with the business community.

In this respect, the Ministry of Employment too has been and is addressing a number of issues relating to business. Work is in progress in relation to the new arrangements for all Insolvency Fund contributions which became payable on 1st April, as from this year, covering all employees in every business. This new arrangement has simplified procedures, thereby cutting down on unnecessary administrative burden on employers. In this respect, the Ministry has had representations from the Chamber of Commerce regarding the £26 levy towards the Insolvency Fund. Again, the Chief Minister, in his address, has already announced the lowering of the £26 down to £18.20, a reduction of 30 per cent to business. Therefore, given that businesses are prepaid up to 30th March 2000 and given that this reduction will be with effect from 1st April 1999, the Employment Service will, over the next few months, do a recalculation long before 1st January when it will be included in the Social Insurance Stamp and employers advised accordingly concerning arrangements.

More good news for business is the announcement by the Chief Minister that Maternity Pay will be paid by the Government. This, no doubt, is excellent news for small businesses and will afford

direct financial assistance. Mr Speaker, I will be saying more on this subject under the third pillar, "fairness at work".

Another area in which the Ministry is reviewing procedures in the first pillar, that is, help to business relates to the question of general employment registration. Representations were received from the Chamber of Commerce, through the Labour Advisory Board, to the effect that too much time was being taken up and delays often experienced in fulfilling employment registration requirements and procedures. In particular, concern was expressed in terms of time needed to be allowed for an employee's registration of Notice of Terms of Engagement with the Employment Service, the collection of the Insurance Card from the Department of Social Security and the issue of the PAYE Allowance Certificate from the Income Tax Department, all invariably involving counter queue delays.

Having now had the opportunity to consider such representations and in an effort to facilitate and expedite the administrative procedures involved, new arrangements will operate early in the new tax year. The above new administrative procedures will enable a speedier and complete employment registration system, introducing, as it were, a "one stop shop" general registration process through the Employment Service of the Ministry of Employment. Prior to its commencement, the Department will provide details to employers through a press statement.

Mr Speaker, to talk about flexibility and adaptability to labour market conditions, the Government's second pillar, is to recognise that to compete for inward investment, thereby bringing business to Gibraltar, we have to adopt a more all-embracing policy that will tackle the long-term structural deficiency in our collective system of providing a service to people in employment, as well as to those out of work. It is with this in mind that much progress has been made in the last year or so. For a start, the Ministry of Employment is far more focussed, prepared and resourced in order to provide a service to employers, employees and unemployed alike. The management structure is now in place and the post of Director of Employment has reappeared after an

absence of about eight years. And on a personal note, may I congratulate him on behalf of the House for successfully obtaining his MA in Employment Law and Industrial Relations from the University of Leicester.

Secondly, the liaison and co-ordination of efforts by various Government departments which have a role to play in employment matters generally has improved dramatically, bringing about a new convergence of interest in order to optimise employment related services generally. And in this respect, much of Government policy and legislation is rightly being influenced by the representation of both trade unions and employers. Government welcome and acknowledge their valuable role in both the Labour Advisory Board and the Health and Safety Advisory Council. In this respect, the Gibraltar Federation of Small Businesses now also enjoys representation in the Labour Advisory Board.

In terms of information technology needs, the Ministry is continuously seeking improvements and is presently well advanced in the preliminary stages of adapting its own in-house devised IT programmes to that of a standardised, yet very versatile Human Resource database product. The new system will allow for further expansion and development of employment information gathering and statistical data.

The system's UK supplier, which owns the copyright and will be licensing its use, is already providing essential training commencing with the Employment Service Information Technology Officer. The new system will further offer the opportunity to enable other Government departments to share part of the Employment Service database.

Mr Speaker, the introduction of the Jobseekers' Agreement will mark a new beginning in Gibraltar's employment history. This will mean a move from the current passive labour market policies, to active labour market policies. The context and the issues that it will address are formidable. At present, If a person is unemployed, he/she can claim either Unemployment Benefit or

Social Assistance. Unemployment Benefit is payable for a maximum of 13 weeks; Social Assistance is not a statutory payment and has no time limit. In both cases the person is required to be available for and seeking work, yet there have been very few checks on whether a person is available for or actively seeking work.

Therefore the aims of the Jobseekers' Agreement will be to improve the operation of the labour market by helping people in their search for work, while ensuring that they understand and fulfil the conditions of receipt of benefit. It will also mean securing better value for money for the taxpayer by closer targeting on those who need financial support and a regime which more effectively helps people back to work.

The Jobseekers' Agreement will, Mr Speaker, identify the steps necessary to assist a jobseeker in getting back to work. It will cover:- availability for work; a clear preference for the type of work sought; what the jobseeker will be required to do in relation to jobseeking efforts; what the jobseeker will be required to do to help himself/herself seek employment, and what the Employment Service will do to assist the jobseeker.

So, there will be a Jobseekers' Agreement/Benefit connections link which will address the duties and obligations between the unemployed and the Employment Service. For its part, the Employment Service will endeavour to provide:- A continuation of our client-centred approach; One-to-one interviewing and counselling; Advice on training opportunities; Specific schemes will be provided by the Education and Training Department; Advice on self-employment, again, here DTI will have an important role to play; Placement on work trials and employment on trial; Access to the Jobclub, and Access to the new wage subsidised measures.

In conclusion and to round up this item, the Jobseekers' Agreement is a major change in approach. The Jobseekers' Agreement has been possible thanks to the positive interplay by various Government departments, in particular by the close

working relationship of staff in the Employment Service and the Department of Social Services.

A key area in which adapting to new labour market conditions is having a real impact is that which refers to Health and Safety. This has been as a result of various factors:- (1) Additional recent new legislation in this field; (2) Greater enforcement of the Factories Ordinance; and (3) Greater awareness of such matters by employers.

Last year, it was my privilege to launch the European Week for Health and Safety, which proved to be a resounding success, both in terms of participation by union representatives and employers and the open exhibition. It is for this reason that the Health and Safety Advisory Council plans to hold such an event on an annual basis in order to promote "best practice", through the medium of such a conference. Here again, as with other members of staff, the Factories Inspectors have been attending various courses and exhibitions in the UK. This is allowing them to specialise and update themselves better in this field. Quite apart from their inspectorate duties, much of their work is geared to guidance and assistance to employers generally before various tasks are undertaken.

Specific legislation which will have an impact on the labour market is the Working Time Directive. The Department is providing a wide process of consultation with the Social Partners and Government departments and shortly hope to bring legislation to this House.

Mr Speaker, in relation to the third pillar, "fairness at work", this is an important aspect of Government Social Policy and a necessary aspect of ensuring acceptable labour standards of compliance. There are various subjects under review, with some already being acted upon. Perhaps the one which is most overdue refers to Moroccan workers. In the past, having spent so many years of my life attending to Moroccan workers' grievances, it makes me very proud to be in a Government which have finally now provided for equality of accessibility to the labour market for Moroccan

workers. It should be noted that, whilst their status is governed as a result of their non-European identity, the good majority of Moroccan workers have been in Gibraltar since before Gibraltar itself became a member of the European Union in 1973 and given their contribution to Gibraltar's economy and well-being, the Government have acceded to afford them the same treatment that applies to other European national residents of Gibraltar in the labour market. This regime will apply to existing Moroccan workers, but obviously not to new arrivals.

Mr Speaker, moving on to other issues and still under the third pillar of fairness at work, I now wish to refer to such matters as redundancy, Standard Minimum Wage and Maternity Leave. Contrary to what appears to be common belief, employees in Gibraltar whose employment is terminated as a result of having been made redundant are not all entitled to redundancy payment. At present, statutory provision for entitlement to redundancy payment only exists within certain industry groups as provided under the relevant statutory Orders, namely:- The Retail Distributive Trade; The Wholesale Trade; The Licensed Non-Residential Establishments and The Construction Industry, as provided by Section 9 of the Employment Ordinance. Therefore, given the lack of protection to workers outside the ambit of what I have just stated, the Ministry has undertaken the necessary review which will provide the necessary safety net for every worker made redundant.

With regard to the Standard Minimum Wage Order of 1989, the Government are not content with Clause 3(2) which states, "This Order shall not apply to persons who are on a monthly salary and on an incremental salary scale". We feel that unscrupulous employers have exploited this loophole and are currently paying below the hourly rate. So, the Government will amend the Order to ensure that monthly paid employees are covered too.

Mr Speaker, earlier on in the item within the first pillar, that is, Help to Business, I referred to the Insolvency Fund and the cost reduction to business. But there is another aspect of which the Government feel that the relevant EU Directive, as transposed,

creates unnecessarily two categories of workers with different benefits. Workers who are not covered by a Joint Industrial Council Agreement, upon the employer becoming insolvent, will only be entitled, in the main, to payments for outstanding salary or wages and annual leave accrued and notice if not given. Yet those covered by a Joint Industrial Council Agreement will be further entitled to other benefits including redundancy payments. It is the view of the Government that the current system is inequitable, given that all businesses and sectors contribute equally, regardless of whether they are covered by a JIC Agreement or not. So this will be amended to provide a common regime, regardless of whether workers are in or out of a JIC Agreement.

Mr Speaker, with regard to the Maternity Regulations introduced in January 1996, which, incidentally, should have been transposed by October 1994, it is clear that these regulations were introduced in a rush four months before the General Election, without any consultation with the social partners. As a result of this, they contain a number of ambiguities that are being addressed and corrected in order to offer the clarification that will warrant due compliance. In this context and further to the related announcement made earlier by the Chief Minister, it is to be stressed that, with this Government undertaking to pay all maternity payments, those ambiguities of the past relating to whether Income Tax or Social Insurance should be paid or indeed who should pay will now be clear enough. That is to say, that no Social Insurance or Income Tax will be deducted from the statutory Maternity Pay. Furthermore, in keeping with the philosophy of the third pillar of "fairness at work", a six months qualifying period is being introduced for Maternity Pay entitlement. Still, that which I have here outlined in relation to Maternity Pay establishes only minimum statutory provision. In cases of collective agreements or specific contractual terms which provide over and above such statutory minimum conditions, such will, of course, prevail.

Mr Speaker, I have here attempted to put together, in as comprehensive and cohesive a manner, the work and development of both Buildings and Works Department and the Ministry of Employment. Substantial progress has been achieved all round and much as may still be required in order for Government to begin to be satisfied with the results of our policy in both these areas, I remain convinced that the many improvements effected to date, together with the many more I have here given notice of will guide us safely and successfully into the next millennium. Thank you.

HON J L BALDACHINO:

Mr Speaker, before I start my contribution I would like to comment and state that we are grateful for the comments that the Hon Mr Corby made on behalf of our late Colleague, Robert Mor. I am sure that he will be missed by many in this House because every time that he made a contribution he had a humour that was only particular to himself. He was amusing to some but annoying to others, let me say in that respect.

Going into my responsibilities, Mr Speaker. This is the third budget of the GSD administration. During these three years which they have been in office I have kept facts of their performance in areas which I Shadow being Housing, Employment and Social Services.

Before I move into that, Mr Speaker, I would like to give notice that I intend to ask, in the Committee Stage of the Bill, for what extra services have the Government paid £53,000 over and above the estimated figure to Milbury Care Services Limited. This is under Head 5-B – Social Services Agency, subhead (7), and for which they have also estimated as recurrent expenditure.

Also, Mr Speaker, I understand that the Drug Rehabilitation Centre is something near to the Minister's heart. He has been saying since he was in the Opposition and prior to being in the Opposition that something should be done in that area. Maybe we can have an explanation when we come to vote the money why it

has taken three years for it to be implemented if it was something that was required so urgently.

I understand that the Minister in his contribution said, and we are estimating for £140,000 even though the people who will be running, if I understood him correctly when he made his contribution, that there will be four people running the Centre on a voluntary basis. If that is not the case maybe we could have a breakdown in the Committee Stage on what is pay and what is the running cost of the Centre.

I would like to go into some detail on matters which we believe that either already affect adversely our community or will be adversely affecting our community in the very near future. In our opinion, Mr Speaker, the Government have been implementing policies without bothering to evaluate the future consequences of these policies. That is, they have no long-term strategy.

I will deal first with Housing. Here I want to strongly emphasise the fact that thanks to the impetus that we gave to try and solve what was Gibraltar's biggest social problem the Government have been able to maintain the situation as it exists today, otherwise the waiting list would be much bigger, and which I will not go into. Nothing has been done during their three-year period, nothing whatsoever on new housing. Mr Speaker, it was history when we reclaimed over 30 square metres of land to be able to provide about 3,000 homes for our people. Over and above this, we increased – the Chief Minister said in his speech that we had not given anything in tax cuts, we increased the tax allowance from £2,000 to £10,000 when we introduced the home ownership scheme on the tax benefits. We also introduced the 50/50 home ownership scheme which made it possible for quite a number of Government rented accommodation to be released for those who were on the waiting list. As a matter of fact, if what the Minister has been able to maintain the situation in housing is precisely because of that because he is still recovering flats from those people who got a flat on the 50/50 basis and are now returning quite a number of flats back to the Government especially in Montagu Crescent and Westview Park which are the only two

projects that have the 50/50. Also the 50/50 option which they are totally against, also opened the door and gave the opportunity for housing to our young couples who before were condemned to live with their parents or in-laws or having to rent in the private sector or find accommodation in La Linea, an opportunity that they no longer have. Yet, Mr Speaker, the GSD when in Opposition used to criticise us saying that there were still those who could not afford to buy. Well, not only thousands took up our offer but we also got back Government rented properties, as I said before, for those who preferred to rent which are the ones that the Minister is now allocating. More importantly, the Government put up.....

[Interruption] The only flats that are now being allocated by the Housing Allocation Committee is based on people who are returning flats from those who bought on the 50/50 basis because no new flats have been built since 1996. In other words, no rented accommodation has been built since 1996. It is either two things, the ones that have been returned by people who bought on the 50/50 scheme who were releasing Government accommodation or people who had died, obviously those are the only two ways that they are getting back rented accommodation because no new projects have come in. Like I said, Mr Speaker, more importantly, the Government put up ex-MOD properties for sale, again a process which we started and we agreed and which they, when in the Opposition, used to oppose and criticise, especially the now Minister for Housing and it is in Hansard. So if we look at the Government record on housing and nearly after a term in office they are not only providing Edinburgh House and this they are able to allocate simply because the MOD have handed over the property to them, some thing which would have happened irrespective of whichever Government would have been in power. In any event, the discussion – and proof of this is that the discussions over the terms of Edinburgh House commenced when the GSLP was in Government and which the Minister used to criticise us because we never gave a clear answer whether it would be for rental or for sale. The Minister for Housing has tried to brush away everything we did by saying in this House that there were still people living in third world standard when he took over. If we look at what the Minister for Employment and Buildings and Works has said, obviously if anything goes by that they must

have only have been in these three years 10 pre-war flats which are not up to standard because that is what they are repairing in three years. If one compares what the Minister said, even though I do not agree with the Minister when he used to say that there were houses that were not up to standard, I would agree with him if he had said that there were some flats which were substandard, I would agree and I also understand that obviously he does exactly what I did when I was in Government was that those that were not suitable for human habitation were not allocated even for social cases. The Government have also announced refurbishing works at different Government estates. After all the activity we put into place we also undertook major refurbishment. It appears that we never did any major refurbishment according to the Government. Varyl Begg was totally done and painted; Penney House was done; part of Alameda Estate, even though the Minister said that the scaffolding was there for a long time let me tell him that about six blocks were done during our time and in three years that he has been in Government we are still on the same block that was there that needed refurbishment. He also emphasised that the number of requisitions that were done but what he does not mention is that well over 50 per cent of housing that is allocated by the Housing Allocation Committee are allocated on the basis of do-it-yourself because people have been told, as I understand and which they tell me, that either they do it themselves or they have to wait six or seven months before the Buildings and Works Department hands it over to the Housing Allocation Committee or Housing Agency so that it can be allocated. Well, if somebody is in need of housing and he is told that he either waits six months or he does it himself obviously the person will do it himself without consideration whether the person can afford to do it or not, he will do it himself and the materials that are allocated obviously are allocated in a percentage to everybody the same. I suppose everybody gets the same when repairing a house. I have had many complaints in that area. I take what was said in Question Time that if somebody who is on the top of the waiting list cannot do it on the do-it-yourself basis the house is not allocated to somebody else. I do not know if that is still the procedure but in any case, people have told me that they would lose the house and it would be given to somebody else, I

do not know if that is true or not because people do sometimes, to get the attention of the Opposition, might be saying things which are not totally correct, I understand that and the Government are saying that the position is that the house will not be allocated to somebody else and I take that as being what is being done. I am not going to go into the details, Mr Speaker, where if refurbishment was being done, I am referring to major refurbishment because on the day-to-day running of works it is on requisitions, it is very difficult to keep track and it is all dependent on a year-to-year or even on a week-to-week but I said to the Minister that I would be prepared to compare what he has done in the four years to any of our four years in Government on what he has done because very little has been done, that is the truth. He mentioned, and I am talking about major refurbishment, Willis's House, MacFarlane House; those have been started recently, those did not start three years ago and the Minister in a question at Question Time said that they even were 15 weeks behind. They have been painting. If the Minister says that painting a block is a major refurbishment work, well. Maybe the expert that he now has believes that major refurbishment is completely different to the advice I used to get but what I can tell him is that he has spent on Hospital Hill flats over £25,000 and an extra £5,000 has now to be spent because the flat when allocated by the Housing Allocation Committee under the Housing Agency found that it was not fit and I can tell him that during my time as Minister for Buildings and Works which I was there until 1994, the expert in my time told me that those houses could not be repaired or refurbished at a reasonable cost. *[Interruption]* I am not going to give way. I am stating facts which the Minister has provided in this House, that is what I am doing.

So what is the Government record in housing? They will allocate Edinburgh House which are still not ready and the construction of smaller units in the same area which is something that I agree should be done. It was something that other governments did and as a matter of fact we did up to a certain point in Gib V. That still has not happened so therefore, Mr Speaker, the Government leave a lot to be desired and we doubt very much that even if they were to be another four years in office they will never be able to

match our performance in eight years because if we now look at the waiting list, Mr Speaker, which is related to the issue, there are at present 639 applicants. I am combining the two waiting lists, the actual waiting list and the pre-list because the Minister drew my attention back in 1996 when they came into Government that I was only referring to one list so I have joined it up to be compatible with the Government. There were 505, an increase from 639 of 135, in April 1997 there were 505. In other words in 1998 we have 639, in April 1997 we had 505 so there are 135 more applicants today than there were in 1997. But in 1996, by subtracting one figure from the other, Mr Speaker, if we subtract the 208 units which I understand that is now what Government are offering at Edinburgh House with extra houses that are being allocated, to the present figure of 639, we come to the figure of 431. By pure mathematics if we did that we should have on the waiting list 431 persons but that is not going to happen. I understand that is not going to happen. But even if we were trying the musical chairs procedure, even if we do that, we will not address the problem. Why, Mr Speaker? Because the Government will still have new incoming applications. That is the reality. So, the most - and I am doing a guesstimate not an estimate, from the 208 we will finish with about 350 to 400 people still on the waiting list. In other words, if it is allocated to people who are also in the private sector then obviously the Government are not going to get any flats back. Like I said, it will be worse than when we left it in 1996 and there is nothing in these Estimates which will provide any new housing in the foreseeable future. Let me say that I think that the Chief Minister in that year accused us of not being a credible alternative because we had no ideas. I think that is what he said in last year's budget and I am now giving, for free, what I think should be done in housing. I agree, Mr Speaker, and the Hon Mr Montegriffo will agree with me because when he was alone here with the only Member in the Opposition at the time of the GSD which he disagreed with his hon Colleague Mr Britto when he brought a motion on rented accommodation and housing for sale, he remembers that motion at the time but I agree with him, Mr Speaker, that for the first time in Gibraltar by doing the 50/50 at least we have created something which is called mobility. In other words, people move

on. We should have two or three tiers of housing, for those people who want to move on and obviously for the newcomers which should have a policy of a 50/50 basis. But, seeing that the Government are totally against the 50/50.....

HON CHIEF MINISTER:

Would the hon Member give way? It is the second time he makes the statement. I do not want to challenge him on it now, I will have my opportunity to reply to him. But this is the second time that he asserts that the Government are totally against 50/50. I do not know where he gets that idea but certainly not from anything that we have said.

HON J L BALDACHINO:

Mr Speaker, in the policy of the Government in housing I do not think.....

HON CHIEF MINISTER:

It is the Government's policy at this stage not to put more housing on to the market on the basis of the 50/50 scheme? That does not mean that the Government are totally opposed to the 50/50 scheme. It simply means that they have their policy reasons for not wishing to pursue it at this stage. The hon Member must have heard me say, probably even when I was in Opposition, I have certainly said so on many occasions whilst I have been Chief Minister, that one of their more enlightened policies, when they were on this side of the House, was indeed the 50/50 scheme and I have always recognised that. The 50/50 scheme has its virtues in a certain measure of quantity. But there are other factors that impact on whether it is wise to continue without a break. That does not mean that we are against it, it simply means that there are other factors involved. I am grateful to him for giving way.

HON J L BALDACHINO:

It is refreshing to hear that the Chief Minister might be thinking of carrying out our policy on the 50/50 basis. Either he is considering and he has thought at this stage that he might consider it later on, whether he considers it later on..... He does not like me to tell him that they are totally against. Fair enough, I will come to that point in a minute. The 50/50 option is not given to the developer, the 50/50 option is given to the purchaser. It is an arrangement between the purchaser and the Government or the company, it is not between the developer. The developer does not come into it.

HON CHIEF MINISTER:

Mr Speaker, that is true only in a very limited measure. The fact of the matter is that to speak of a 50/50 scheme being given to the purchaser and not to the developer suggests an element of discernment, discrimination, as to who gets it and who does not. But when every purchaser gets it, it is not being offered to the purchaser, although the purchaser obviously gets the benefit of it, gets a whole house for half the price, but the scheme attaches to the development rather than to the purchaser. I do not know whether we are at cross purposes or that may not be what is.....

HON J L BALDACHINO:

Mr Speaker, if the Government decide that a certain housing project, they will be prepared to finance it on a 50/50 basis, the consideration who gets the 50/50 will be based on the purchaser and not on the developer, that is what I am saying.

HON CHIEF MINISTER:

I can tell him that if we did introduce another 50/50 scheme to a block it would not be on the basis of everybody getting it, it would be an assessment of the means of the purchaser and that would be a difference to the way the hon Members did it.

HON J L BALDACHINO:

So it will be means tested. At least I got that one out from them, Mr Speaker. What I am saying is there have been cases in a development where other 50/50 were being given. There was somebody who was refused a 50/50 basis even though he met the criteria that is established now. This is something which I did not understand. The other thing I would like the Chief Minister to consider is that a flat has been refused on a 60/40 basis on resale to somebody who is a British national, who has been living here for over 15 years, has been refused the 60/40 even though she lived here during her school age. That is something that did not happen before in my time because I would have allowed that even though she has a child and the father is Gibraltarian and even though she is a single parent.

HON CHIEF MINISTER:

I am grateful to the hon Member for giving way yet again. Mr Speaker, this is the second time that the hon Member has made this point in the House and on the first occasion that he made it I did check on what he said. The position is that the Government have not altered the eligibility rules from the ones which we inherited from the hon Members. What we have done is continued with the scheme as it was. I am therefore very surprised to hear the hon Member for the second time, although he obviously cannot remember the first time, for the second time suggest that we have somehow closed the door on long-standing non-Gibraltarian British citizens. We have no evidence for the fact that the practice has changed. We have not changed the policy or the rules and as far as I am aware it is the same officials enforcing them. The only other possibility, although I am certainly very happy for the hon Member and my hon Colleague the Minister for Housing to sit together in the Housing Ministry with the official in question to rummage around to see where the explanation lies, the only other possibility is perhaps that it is not right as the hon Member says that it was available to non-Gibraltarian British citizens but it is worth getting to the bottom of the point, certainly. There has been a case refused now that would have been

granted in the past. It has occurred through administrative inertia of some sort and certainly not because there has been any change in the rules which there has not been.

HON J L BALDACHINO:

I am more than willing, Mr Speaker, in that particular case, to sit with the Minister for Housing and the official and sort it out.

May I now turn to employment, Mr Speaker. It is a norm for the Minister for Employment and Buildings and Works when quoting figures and comparing their performance to ours in Government always refers to 1992. I do not know why because from 1992 to 1996 something must have happened but I am sure that what has happened is not to the liking of the Minister. I suppose it is because he will have great difficulty in defending his performance as Minister for Employment. Last year, Mr Speaker, and I am going to quote from Hansard in what he said in the Budget, Volume I, 1998, page 66 "the one industry group that shows a different picture is the construction but even here for the sake of clarity it is important that we focus in order to avoid a typical manipulation of facts by the Opposition first of all in items of Gibraltarians in employment at the 31st of March 1998 in the construction industry. There are 760, out of a total of 2,209. This is the highest ever since records are kept by the ETB as far as Gibraltarians. The high number indeed applies not just to Gibraltarians but to other nationalities too, both in short term employment and the size of the present construction group under the GSD Government. Mr Speaker, the present cynical point in this industry group can only be properly understood if we turn back to the previous cynical peak under the GSLP Government in 1992. Then there were a total of 2,895 yet only 499 Gibraltarians, which represents a 72 per cent of the total as opposed to 34 per cent in 1998. A real and substantial increase as far as Gibraltarians are concerned in this industry group. To put it in another way, whilst in 1992 for every Gibraltarian employed in the construction industry there were six other nationalities, in March 1998 for every Gibraltarian employed there are three other nationalities but it is common knowledge and statistics have long

proved that an extreme high percentage of non-resident labour is engaged in the construction industry." What can be demonstrated and why they insist on comparing their figures to those of ours for 1992 and ignoring October 1995 and April 1996 when we were in office, the position on employment in the construction industry of the different nationalities was as follows: In October 1995 total employment in the sector was 966, Gibraltarians 555, 57.5 per cent, Spaniards 83, 8.5 per cent. In April 1996 when we were still in Government, the total employed in the sector was 1,082, Gibraltarians 583, 54 per cent of the total, Spaniards 143, 13.3 per cent. In October 1996, Mr Speaker, is when the trend started to come down and when we were in Government, the position was that there was 54 per cent Gibraltarians employed. The Minister makes a song and dance of a substantial increase in 1998 when the percentage of Gibraltarians employed in the sector was 34.4 per cent. In other words, he is the only person, Mr Speaker, that I know of that a reduction of 20 per cent of employment in the construction industry of Gibraltarians is a substantial increase, the only person I know that can do that. But, of course, he did that because he was referring to 1992, Mr Speaker. When we left Government it was in 1996. One can only compare the figures when one gets them, one cannot go back and if I were to go back to 1972 or the year 1926 we might find a difference. He should compare the figures when he took office and what we left but he does it with everything, Mr Speaker, even with unemployment figures. In unemployment figures what does he do? I think that the Chief Minister also did it in his speech. He refers to how well they have performed and they compare the figures to 1998 by how much they have brought it down. In February 1996 we were in Government, 380. February 1997, they were in Government, 467, February 1998, 598. Mr Speaker, and then he said "I have brought down unemployment from 598 to 388". The Minister started off with 331. The unemployment figures today are more or less the same as they were in 1996. But of course in press releases the Minister says that 4,021 vacancies have been filled and he was saying that unemployment was coming down because new businesses were coming in but, Mr Speaker, the new businesses must have been reflected in the 4,021 vacancies, it cannot be reflected anywhere else. It is inter-

linked, one thing with the other. When I questioned him about these new businesses, he could not answer. He could not answer because the computer did not register or he could not bring out the information because the technician was in UK. I remember in 1996 that the Minister offered me to go down to the Employment and Training Board to have a course. I offer myself now to him that if I go down there I will be able to extract this information and I was only there one year and he has been there three. But, of course, what he does not tell us, in any press release,
[Interruption] No, the Chief Minister has not been listening, he has been talking to somebody, I will repeat it for his benefit.

MR SPEAKER:

No, carry on.

HON J L BALDACHINO:

Thank you. But what he does not tell us, Mr Speaker, is that during the year 1998, the calendar year is what I am referring because he was referring to vacancies filled on a calendar year and I am now referring to the calendar year, that there were 3,656 terminations. Of course, when they do the propaganda exercise of bringing out press releases they only do it half measure and therefore to compare things one must have all the information. So in the year jobs filled 4,021 which the Minister cannot tell us what new business came into the economy and we lost 3,656 which, of course, brings us to another point. If that thing is happening, Mr Speaker, then obviously every time that somebody is employed it does not mean that he is employed because he is unemployed, there is a movement of people moving jobs. And when we asked the question in the House, Mr Speaker, and let me give him the figures, if we were to compare the first quarter of 1996 to 1999 which is what I was telling the Minister, in 1996 on average the first quarter was 380 unemployed registered; in 1997 - 445; in 1998 - 581; and in 1999 - 383. So the song and dance made by the Minister that they have brought unemployment down from 581 is that they have finished up with what they started in 1996. If the

Minister wants a copy of what was happening in the construction trade from 1988 to 1994, I am able to provide him, for his perusal, a copy and he will see that the picture that he set in 1998 was not the case.

On this new Jobseekers' Agreement which the Minister said will be implemented which I do not understand why he should be doing that if employment is as he says it is. I am going by the figures that have been provided and I suppose that the Minister is referring to people who are on supplementary benefits because they are the only persons.....[Interruption] This new Jobseekers' Agreement, I suppose he is only referring to the people who are on supplementary benefits. If he is going to punish anybody the only people who he can punish is the people on supplementary benefits if they do not take up a job because people who are not getting any payment and he said that it was a burden on the taxpayers, people who are getting no payment are not a burden to the taxpayer, the people who are getting unemployment benefit is a statutory requirement that has to be paid to them for 13 weeks. In that amount of supplementary benefits I suppose there are elderly people there who get that as well, it is not just people of employable age. In any case, the claim by the Minister that he has brought down the unemployment figure for Gibraltarians is not correct at all. Like I said before, he increased it and then he brings it down and he says, "What a good boy am I". Well, he increased it originally so how can he take that credit? His performance in this area, as in all other areas has been a complete shambles, Mr Speaker. The situation proved that very few new businesses have been attracted to enter the economy and if there are then they should tell us because the Minister for Employment has not been able to do it. The private sector is more or less stagnant so there has not been any movement in that area so no matter how much rosier the Minister for Employment wants to paint the picture, the figures at our disposal and which have been provided by them, proof that the picture is definitely not rosier, than it was in 1996 on unemployment. We have said that this Government work at a slow pace, what they work very hard at is controlling people's perceptions to their political advantage, in the process they try to eradicate from people's mind what the real

truth is. They do it so often, Mr Speaker, with their propaganda that perhaps they have even began to believe it themselves. As we are being bombarded constant propaganda they have even had the audacity to try and take credit for the projects that were left unfinished by us and the Minister has mentioned quite a few. The very few projects that have their name, are repeated over and over again to give the impression that so much more is being done than what the case really is. As the saying goes, Mr Speaker, and as the Minister for Employment once said in the House, I do not know if this is attributed to a great man called Lenin or I think the Minister mentioned Lincoln, if I remember correctly, he must have made a mistake when he stood up and said it, I am relating it to Lenin, "people can be fooled but they cannot be fooled at all times; some can even be bought but until when can they continually be bought and at what expense". What is absolutely clear is the fact that whether in the area of housing or employment or in any other area, for that matter, nothing of real substance has materialised and Gibraltar has lost the momentum we started in 1988 on housing and which has continued only up to 1996. Thank you, Mr Speaker.

HON LT-COL E M BRITTO:

Mr. Speaker, I have my usual problem when I start my speech to explain to the House that because I cover such a large number of different areas both in Government Departments and in utilities and in broadcasting and so on, 11 different areas that I need to cover, consequently it is difficult to structure the contribution and it becomes a little bit disjointed so I apologise in advance if it is a series of different contributions as opposed to an easy flowing one. For ease of reference, all my Government Departments come under Head 4 of the Estimates and in order to tackle it differently from what I did last year, I will be starting with the Government Departments but tackling them in the reverse order in which they appear in the Estimates, so I will start first with sport.

I am delighted to announce to the House that the Government have decided to embark on a major initiative to enhance, improve

and develop Gibraltar's sporting facilities. The concept is a simple one but one which will have dramatic consequences for the future of sport in Gibraltar. The Government intend to reclaim land in the area of the Victoria Stadium. The area of sea bounded by the airfield to the North, by the Victoria Stadium Road to the East and by the Marina Bay Development and car park to the South and that reclaimed area, in the area on what was called Scott's Shiprepair Yard and together with that reclaimed land and land adjoining areas already owned by the Government, it is intended to develop new sporting facilities. It is a medium to long-term project and by far, the most important of these new facilities will be a water-based hockey pitch which is the type of surface on which our hockey teams have to compete on when they travel away from Gibraltar and although they do extremely well when they do, there is no doubt that they should do better if they have the surface to train on which is the same as what they meet when they are away from Gibraltar and it is also expected, as I am sure hon Members realise, that once this surface is provided, it will bring top level hockey to be hosted and played in Gibraltar, the European Finals. Apart from this there will be other facilities and the project also envisages the provision of a new indoor sports hall to relieve pressure on the Victoria Stadium Sports Hall and provide much needed additional indoor facilities. The final list of sports that will be catered for has not yet been finally decided and there has been an initial study but it will be the subject of consultation with the Sports Advisory Council. But at this stage it is expected to include a Water Sports Centre; reprovisioning of the USOC playing area where the building of the skate park is about to start on the USOC area itself. Mr. Speaker, as hon Members will realise, this is an ambitious project and it is an investment by Government in the future of sport and in the development of sport. It is being made in the confidence that Gibraltar is a very sports-orientated society with high levels of participation and performance and with the knowledge that our youth, and those who are not so young but still active sportingly, will put these facilities to as full a use as they do existing facilities at the moment.

During the past year 1998/99, the most important action that was taken by this Government in respect of sport was to set up the Sports Development Unit and to employ a Sports Development Officer as had been recommended by Mr Mike Lockhart of the English Sports Council in the report he prepared which we commissioned. It is interesting to note, when he came over for the Official Opening in March this year, at the Sports Development Seminar in which he was present, it was interesting to note that he said he was extremely excited and pleased to see that his recommendations had been put into effect so quickly by the Government; that like many recommendations he was not sure how quickly they would happen and he was delighted to see in what short period of time they had actually become a reality. The Sports Development Seminar, as I say, which launched the Development Unit included the participation of international experts on sports development from outside Gibraltar and this, together with the active implementation of Government's policy statement on sport, has set the basis for the development and improvement of sport in Gibraltar. In answer to Question No.426 of 1999, I gave a detailed explanation of the programme of the Sports Development Unit, of what it had done since its inception and its plans for the future, so I do not intend to cover that now.

The Gibraltar Sports Advisory Council continues to be very active. It has now set up six sub-committees, which meet regularly, as indeed does the full Council meet about once a month and I would like to place on record Government's appreciation and gratitude for the advice received from the members of the Sports Advisory Council and for the effort and time that these members dedicate for the benefit of sport and, of course, on a purely voluntary basis.

During National Week, the competitions for the Gibraltar Trophy involving the participation of 26 different sports once again took place. It is expected that once again this event will take place this year and that the event will continue to develop from strength to strength.

The Premises Committee continues to meet on a regular basis. The main emphasis this year has been on the completion of works to premises previously allocated, and on the collating and assessing of information requested from organisations on the waiting list. A revised waiting list is in the process of being completed which will be used as a basis for future allocations based on the information that has been asked for in questionnaires, questions like, for example, number of members; size of premises being required; how often they would meet, et cetera. It is an effort to fit associations and clubs into suitable premises and not give them something that is bigger than what they need. However, new areas were allocated during the year and are already being occupied by the Girl Guides Association, by the Group HOPE, by the RAOB, and the Gibraltar Football Association. At the moment Government are currently considering a proposal to convert, in a joint venture between the Sports Department and the Department of Education and Culture, the ex-Recreation Rooms at South Barracks to accommodate a number of cultural societies.

Gibraltar Sports people have continued, with Government financial support, to make us proud in international events, here and away from Gibraltar. Our younger sports persons performed very well in the first ever Straits Games held in Algeciras last year; the Gibraltar Junior Football team obtained great success in the Holland Cup, as did our Darts team in the European Junior Championships. Creditable performances were achieved, amongst others, by our men's and women's basketball teams in the Promotion Cup and by our hockey clubs in their European Competitions as well as our representatives at the Commonwealth Games held in Malaysia. I cannot let this opportunity go by without putting on the record the Government's appreciation and sending congratulations, hopefully, from Members on both sides of the House, for the tremendous effort and success of the Eagles Hockey Team in obtaining promotion to the 'A' Group of the European Hockey Champions Cup. In essence, this means that once again this year for the third time over a period of years, Gibraltar next year will be playing in a competition which is essentially the top eight hockey nations of

Europe. It is a tremendous achievement by Eagles Hockey Team to put us there and one in which I am sure all Gibraltarians are justifiably proud.

In the last financial year 1998/99, Government provided increased funding for direct financial assistance to sporting societies participating in official international competitions abroad, for sports development projects and for improvement to sports facilities. Bids for funding under these Heads submitted by the sports governing bodies are considered and adjudicated by the Gibraltar Sports Advisory Council. The beneficial results of this increased financial assistance included a larger number of local sports people travelling to compete in competitions away from Gibraltar; the provision of accredited coaching courses; the purchase of specialist equipment; the purchase of the necessary equipment for the installation of a completely new floodlighting system for the Victoria Stadium, which is about to be installed; and improvement of other facilities at the Victoria Stadium, Hargrave's Court, South Barracks and USOC which was handed over by the MOD and is already being used extensively by the schools and the community. I am pleased to say that once again this year there has been a further increase, further increase as opposed to what there was last year, in financial assistance to sport based on bids received from the governing bodies and as reflected in the Estimates before this House. A new separate item has been created to cater for multi-sport international competitions such as the Island Games, the Commonwealth Games and the Straits Games. Funding for improvement to sports facilities will continue and, amongst other important projects, there will be assistance in the installation of a much needed dehumidification system for the GASA indoor swimming pool.

It is also intended to work in partnership with the Gibraltar Tourist Board and a number of local sports governing bodies to launch a pilot scheme for the marketing of Gibraltar as a destination for sports tours. This will include a leaflet to be inserted in the Official Tourist Brochure giving details of specific sports, venues, et cetera as well as details of the hotels, special rates who are participating in this scheme. Once again this year Gibraltar sport

will be competing in a large number of international competitions. Amongst these will be participation in the 1999 Island Games to be held in Gotland, Sweden next July. The programme of sports events to be held in Gibraltar, forming part of the Millennium Celebrations, is still being finalised. I can say that in the earlier part of the year 2000, Gibraltar will be hosting the European Snooker Championships; the World Club Shore Angling Championships; and in May, the Straits Games, with the participation of a total of approximately 1000 young people.

To conclude my contribution on sport, Mr Speaker, I would like on behalf of the Government and hopefully on behalf of Opposition Members as well, to publicly show our appreciation and gratitude to the large number of volunteers within the sports governing bodies and clubs whose efforts are essential to the running of all and very great variety of sport which is practised in Gibraltar and without the assistance of whom many of these sports would just simply fail to reach the high levels of participation and performance which they achieve now.

Mr Speaker, I now come to the Post Office where the computerisation of mail records has been completed and plans are now being prepared to commence submitting outgoing documentation in computerised form. This will bring the Post Office into line with other postal administrations. Outgoing mail has suffered no substantial delays and mail continues to be despatched from Gibraltar on a daily basis, except on Sundays. Due to the cancellation of air communications between Gibraltar and Morocco, air mail for Morocco is now being despatched via Gatwick.

The Post Office is now in its final stages of transposing Directive 97/67/EC into the relevant sections of the Post Office Ordinance and subsidiary regulations.

As the House is well aware, the rental on PO Boxes was increased as from the 1st April 1999, 10 years after the last increase in these rents on the 1st April 1989. Postage rates for overseas destinations were also increased as from the 1st April

1999 and this increase brought the first weight step postage rate from Gibraltar to the United Kingdom and the rest of Europe into line with that which had existed in the reverse direction, that is, from the United Kingdom to Gibraltar and Europe since 6th April 1998, one year before.

Self adhesive postage stamps were officially put on sale for the first time ever in Gibraltar on 1st April this year and have been well received by the public and by the commercial sector. A new international Business Reply Service, which was in the past only available for domestic mail, has also been introduced in the past year.

Mr Speaker, as hon Members will know, in recent weeks, inconvenience has been caused to the public by difficulties being experienced in the Post Office and specifically with the postmen and postwomen. The difficulties originate in certain working practices by these postmen and postwomen which result in some mail being delayed. Government are determined to eliminate these undue delays and to rectify other problems affecting the quality of postal services to the public. The problem essentially is that over the years the practice has become prevalent by which bills or statements of accounts are separated from other items of mail or letters and are treated differently by the postmen. Whereas normal letters are delivered more or less within an acceptable period of 24 to 48 hours, these bills which are bundled into separate bundles are put aside and are delivered on the basis of one a day by the postmen concerned. There is no basis for this in any agreement with the union and it appears to have become established practice over a number of years but the consequence is that, as is well-known in Gibraltar, those bills are sometimes delivered up to two and even three weeks late. The Government have decided that it is no longer acceptable for these bills to be continued to be treated separately and have asked the Post Office management that there should be no further segregation of mail in this way, that mail is mail and that it does not matter what is inside the envelope, that it has to be treated equally. Let us be clear, Mr Speaker, this is what has triggered the current problem because although the postmen and

postwomen are not on strike they are nevertheless not working the normal conditions they were working for and there is a considerable backlog of mail as a consequence.

HON J J BOSSANO:

If the Minister will give way. May I ask is the explanation we have been given, in fact, that it is only affecting that bulk mailing of bills or is it affecting normal post as well?

HON LT-COL E M BRITTO:

It is affecting everything, Mr Speaker, because although Government have made it clear to the shop stewards and I was present at that meeting with the shop stewards and I made it personally clear, Government have made it clear that we do not wish to penalise the postmen or postwomen on the basis of their relatively high levels of remuneration or are not seeking to reduce that and neither are we, in fact, seeking to reverse the fundamental practice where postmen go home early if they have finished their delivery but what we are not prepared to do any longer is allow this practice of postmen going home early when there is still large amounts of bills, as there used to be in the past, pending delivery. So what we are saying is mail is not segregated anymore, joined up together, we appreciate that when the bills come in there will be some delay necessarily because of the large amount of statements that come in but under normal circumstances mail should be delivered within a 48 hour period and a little bit longer when there are bills and it seems that the postmen are not prepared to accept this situation. They have decided to work a full day, from 9 am to 4.15 pm but, in fact, at the moment they are taking, as hon Members will know, the postman sorts out his mail and then goes out and delivers it and in the past it would take a couple of hours in the morning to sort out the mail and they would leave the Post Office between 10 am and 11 am, deliver and come back early afternoon having delivered whatever was in the sack, so what is happening now is

that some of the postmen are sorting out what used to take a couple of hours before is now taking four, five or six hours and they are sorting out until 3.50 pm, going out at 3.50 pm and come back at 4.05 pm and that situation is not acceptable to the Government and will not be tolerated for very much longer. That is essentially, I have gone into some detail so as to make hon Members aware of what the present situation is.

Mr Speaker, I also have to announce that Government have decided, and no doubt Opposition Members will welcome this because they were encouraging us to do it, to reverse the decision to transfer the Post Office to the Health Centre. After careful consideration and a lot of thought, it has been decided that the Health Centre is better suited for commercial development within the general development, improvement and embellishment of the Casemates area and so we have decided to reverse the decision. However, in doing this, Government are also conscious that the present Post Office is badly in need of internal refurbishment and redecoration. At present Government are studying the possibility of moving the Post Office, on a temporary basis, somewhere else and a possibility is the Haven when the Department of Social Services move out from there. An extensive programme of refurbishment and decoration will be carried out at the present Post Office, and once this is completed, the Post Office will return to its current location at Main Street.

Dealing now with the City Fire Brigade, Mr Speaker, I am pleased to inform this House that the Brigade will complete its 5-year Plan this year in time and within budget. During the previous financial year, training continued to be a priority and has resulted in a large number of Brigade members attending courses in the UK ranging from Fire Safety to Ship Firefighting. Of particular importance and I have to highlight is an HNC, a Higher National Certificate, to Mr Mauro for an excellent performance in the Divisional Command Course which included an attachment in Northern Ireland. An even greater achievement is the BSc Hons gained by Mr Louis Casciaro in Fire Safety Technology and Management and also obtaining a further qualification in Fire Service Management. These results and others, together with the excellent reports

being received from the different colleges and centres in UK, are extremely encouraging and ensure that the progression of qualified officers in the Brigade is guaranteed. As we speak, two other officers are in UK attending Command Courses at the Fire Service College.

The Brigade will shortly receive a new fire tender which is based on a Mercedes Benz chassis. This vehicle is provided with the latest technology and will become a valued asset in their operational resources. The Brigade's mobility has been further improved by the supply of two motor cycles for the Fire Safety Department whose officers are constantly involved in carrying out inspections. One of the Fire Safety Officers is well on his way to attaining an HNC in this field after completing a 5-week module course in UK.

As a result of public demand, the Brigade has held seven courses under the requirement of the Health and Safety At Work Ordinance. The senior management of the Brigade is currently working on the next five-year plan to see us well into the next millennium.

For his part, the Chief Fire Officer is chairing a committee which is revising the emergency plans affecting Gibraltar. A completely revised set of documents is expected to be available next year. On the operational side, the Brigade responded to 1,210 emergency calls and together with the Fire Prevention Branch, carried out a total of 1,240 inspections. In addition, the Brigade has since June of last year, been providing a back-up emergency ambulance cover first to the Royal Gibraltar Police and then to St John.

In summary, the City Fire Brigade has worked efficiently throughout the last 12 months and its future plans will ensure that this efficient service continues.

In respect of the Electricity Department, I once again have to inform the House that demand for electrical energy continues to grow. Total generation during the last financial year amounted to just over 116.3 million units which is 3.8 per cent higher than in the previous financial year. Maximum demand also increased by 500 kilowatts and stood at 22,100 kilowatts.

Substantial progress has been made on the installation of the Distribution Centre situated by the American Wall Memorial. All the high voltage switchgear and other ancillary equipment are now installed and delivery is awaited of the SCADA system some time this summer. Once the SCADA system is functioning, a start will be made on the transfer of circuits still fed from King's Bastion.

The construction of the new depot at Rosia Road is progressing and the construction of the ground floor is well advanced. Completion of this building is expected before the end of this calendar year.

The Department is ever conscious of the need to improve the reliability of all generating plant and distribution equipment and therefore plans to commence a high voltage switchgear replacement programme. The object of this exercise is to replace old and obsolete equipment by more modern designs. Advantage will be taken to increase transformer capacity and extend the number of circuits that may be supplied from these substations. A further innovation in our distribution system is the installation of mini-pillars at selected locations. These mini-pillars allow connections to be made between distributor and service cables without the need for underground joints. Failure of these underground joints are a well-known cause of localised power cuts, so these mini-pillars will improve the reliability of supply. This is a long-term strategy rather than a programme that can be phased over a short period of time, but I mention it because it shows the Government's continuing commitment for improvement and also so that the public who may become curious at seeing these square boxes spouting in various locations in town will know what it is about.

Finally, Mr Speaker, the Electricity Department laid supplies to some 500 new consumers during the year, a new sub-station was commissioned at Westview Park and supplies of electricity also installed at the Montagu Crescent development.

HON J J BOSSANO:

Before he leaves the electricity, can the Minister say of the 116 units what has been generated by the Government, does he know?

HON LT-COL E M BRITTO:

No, Mr Speaker, not off the top of my head but I can try and get this information for him and give it to him at the Committee Stage.

Last but not least, Support Services is the fifth Government Department for which I have political responsibility and it has undertaken a number of significant projects during the last financial year. In fact, a total of 24 major Building or Civil Engineering projects some of which have been completed already and others are scheduled for completion during the current financial year. As well as that a number of significant Information Technology projects since the Information Technology Services Unit comes under Support Services, started last year and most of them will be completed during the current financial year.

So I will start with computer developments and advise the House that the Information Technology infrastructure has now been set up which will form the core of a future Government-wide communications network. Additionally, various departments have been independently networked with internal electronic mail and some of these already have the facility to communicate with other departments in this way. PCs continue to be installed throughout the Government departments and it is envisaged that most departments will eventually form part of Government's network. Various software projects have been undertaken, some of which have been completed whilst others are still in progress. Amongst those that have been completed are : A computer system for the

Housing Department; A computer system for the Prison; A new Tilling System for the payment of pensions for the Department of Social Services; A Government Pension Payroll System; A Driver's Licences issuing System; A File Indexing and Booking System for No. 6 Convent Place. In fact, this last system, although tailor-made for No. 6 Convent Place, has been designed in such a way that other Government departments who wish to do so will be able to avail themselves of this computerised file indexing system.

During the forthcoming financial year, the Information Technology Services Unit will continue to develop a number of projects. Amongst which are: a Human Resources System for the Personnel Department which is in the process of being implemented; a Collection System for the Customs Department entry point and a computer system for the City Fire Brigade which are being developed; the implementation of a Geographical Information System in partnership with Lyonnaise des Eaux and Gibraltar Nynex Communications Limited, which is imminent; and a new system for the Employment Service will soon be implemented.

The following are being investigated: a Complex System covering the many facets of the Port Department; a System for Births, Deaths and Marriages; a Database for the Register of Gibraltarians.

The department is also involved in a number of on-going projects. Amongst which are: ensuring that all computer systems are Year 2000 compliant; the centralisation of data for use by the Income Tax Department, the Department of Social Security, the Department of Employment and the Civil Status and Registration Office. The final design and implementation of this system is dependent on finalisation of the projects to computerise the individual departments. A new Motor Vehicle Licensing System is in progress.

All the projects I have mentioned, on-going or under study, have been or are being developed either in-house by IT Services Unit

or in partnership with local and UK companies, but I stress that all the projects are monitored and controlled by the Government's IT Services Unit to ensure compatibility.

The Unit has been very closely involved with the setting-up of the Government's Web Site, which is now at a very advanced stage and will go live to the public in the very near future. In fact, I can tell Opposition Members that it is already live but password protected, the password known not to many people at the moment, and I have been on the site myself and it still needs to be fine tuned a bit and tidied up a bit but it is now very nearly in its final stages and as soon as we are happy with the way it looks and with its contents, it will be made publicly available. This has been an ambitious project which has taken longer to implement than originally estimated mainly because the vision of the project has expanded as it has progressed and as the Web Site has been developing. What had been initially designed as a small Web Site has now been expanded considerably with most, if not all, Government departments having a presence and also with areas of general, touristic, cultural and geographical information about Gibraltar. It will be an on-going project, Mr Speaker, it is something that as long as we have the Web Site will never finish, it will be on-going development not only in updating information on it but as new areas are identified and are worth publicising or indeed as Gibraltar's political situation develops and we make use of this medium of potentially reaching targets of 70 million people throughout the world.

Mr Speaker I will now move to the more traditional roles of Support Services in covering the areas of engineering, architecture and project management.

Work started this year on the removal of the rockfall at Camp Bay as well as on the stabilisation works to the cliffs. Following extensive field tests and investigations subsequent to the major rockfall in Camp Bay, a design was prepared by specialist consultants for the removal of the rockfall material and for the subsequent works permanently stabilising the resulting cliff face. Due to the potentially unstable nature of some of the remaining

sections of cliff face, whole sections have been brought down and the remaining cliff re-profiled. The work, which is currently being done, uses controlled explosives, a method which had not been used in Gibraltar for some considerable time. The works, I am pleased to report, are progressing on programme and every effort is being made to ensure that they are completed and have reached a stage that will permit the beach to be used during this coming summer.

Advantage has been taken of the fact that we have specialist consultants and contractors working at Camp Bay to undertake further cliff stabilisation works on the section of cliff face immediately below Buena Vista Barracks. Potentially unstable rocks in this area are being tied back to the cliff face by rock bolting techniques. These works are being undertaken in parallel with the works at the rockfall area and consequently will be completed within the same contract period.

A second major project undertaken during the financial year is the erection of a rockfall catch fence along a section of Sir Herbert Miles Road. Works on this are still currently on-going and due for completion this month. The new fence will act as a barrier to arrest any rocks which may fall which may manage to roll down the slope and beyond the slope and if they do so the fence is designed to prevent them from reaching the road below. It is 430 metres long and is being erected along the sections where rockfalls are most frequent.

During the year, works were also completed on the reconstruction of two retaining walls at the Loreto Convent playground and at St Bernard's Road. Smith Dorrien Bridge was refurbished and painted and concrete repair works were carried out to Referendum Arch and Gates.

Work continued during the year on the city centre beautification and the scheme was extended to include a number of new streets. The section of Irish Town from Parliament Lane up to Cloister Ramp has now been completed with the area having been repaved in keeping with the style previously adopted for

Main Street. New street furnistration is shortly to be installed providing the finishing touches to what has been a very successful project. Bishop Rapallo Ramp and Cannon Lane have also been afforded the same treatment and this has resulted in a complete transformation of these areas. Now work is currently being carried out in Parliament Lane with such works programmed for completion this month.

The embellishment works at Winston Churchill Avenue were completed during the year. This has resulted in a complete transformation of the area with new flower beds having been constructed, all kerbs and footpaths renewed, new pedestrian barriers having been erected and the complete refurbishment of the existing footbridge. On completion of these works, the Ministry of Transport undertook the complete resurfacing of the road thus adding the finishing touches to this project.

The Casemates Project, a flagship for this Government, was commenced during the year and already glimpses of the final project are beginning to be visible with sections of the Square already having been repaved. The Square itself is undergoing a complete transformation. The area of the original Casemates Square has been merged with that of the road and open area in front of the Health Centre Building thus resulting in the creation of one large open space. The whole area is being repaved using the same material as for Main Street and other City Centre works and new trees will be planted at various locations within the new Square to compensate for those existing trees which unfortunately had to be removed to realise the project.

Following the very significant archaeological finds within the Square, the Government decided to leave a small area permanently open and so create a historical feature and consequently the Casemates Project has been modified to allow for this. The refurbishment of the Casemates Barrack Block was also started with most of the vaults already having been emptied and cleaned out. Demolition of an extension situated at the extreme west of the Barrack has now been undertaken and this has revealed the original stone façade of this building which

unfortunately had been hidden from public view for a long time. This project is scheduled for completion in December of this year.

The new seafront promenade at Westside was also completed this year resulting in a unique and very attractive promenade. The facility provides for an amenity/leisure area for the public within a garden/seafront environment. Children playground facilities are also available within the area and there will shortly be further facilities provided such as cafeteria, public seating areas and further attractions for the children.

The second phase of the widening of Line Wall Road, otherwise known as Lover's Lane, was commenced this year with such works being scheduled for completion this coming July. The works are a continuation of the road-widening scheme undertaken during the previous year and despite the misgivings of the Hon Mr Gabay, will result in much improved traffic flows in this area of town.

The ex-Governor's Meadow School at Grand Parade was demolished with the resulting area being used for car parking as an extension to the existing car park at Grand Parade. Currently being undertaken is an embellishment project which will result in a much improved entrance to the Botanical Gardens. The area will be extensively embellished and new ornamental gates erected. In addition, public toilet facilities will be provided at this location and the whole area will be transformed visually as well as extended in parking facilities. I am also pleased to confirm, what I had announced previously that very shortly work will commence on the demolition of the King's Bastion Electricity Generating Station in Queensway.

During the year an extension was constructed to the Senior Citizens' Club at Town Range to provide the club with much needed additional facilities for its members. Included as part of these works was the embellishment of the adjoining areas to the extension as well as the waterproofing of a number of existing walls which suffered from water penetration.

During the year, Mr Speaker, Support Services Department has acted as Designers and Project Managers on a number of other embellishment projects financed from Heads controlled by other departments with the major project being the widening of Sir Herbert Miles Road. Two sections of this project have now been completed, a third is due for completion this month with the final section scheduled for completion this coming summer. The project will result in the widening and complete embellishment of the section of Sir Herbert Miles Road from its junction with Catalan Bay Road up to the area of the Both Worlds reception. This will ease traffic flow and improve traffic flow along this road which is the primary route for tourists visiting Gibraltar as well as providing a more pleasant and appealing environment for all Gibraltarians and other residents. In this context I would like to draw the attention not just to Opposition Members but to members of the public who may be listening in, that we are suffering the results of wanton damage to newly refurbished and reprovided areas along this road; wanton damage which is unnecessary and I encourage members of the public who have any knowledge of how this damage has been perpetrated or who it is being perpetrated by to take action and inform the Police and impart any knowledge that they may have.

Other projects, Mr Speaker, that have been undertaken by this Department under this heading are far too numerous to mention individually but I will highlight just a small number, and these are: the refurbishment of Edinburgh House Complex; the construction of a new residential building for the Senior Citizens within the Edinburgh House complex; the construction of a new Ferry Terminal facilities at Waterport; the replacement of Balconies at Willis's and MacFarlane House; the creation of a new Coach Park area and Terminus building on the site of the old Coach Park at Waterport; conversion of the Buena Vista Barrack block building for use as a hostel; and refurbishment works at the temporary Motor Vehicle Test Centre at North Mole.

Mr Speaker, I now turn my attention to the Gibraltar Government Lottery where there has been no great significant change during the past financial year. The Treasury Department continues to

monitor sales and returns of lottery, and Gibraltar remains the second highest per capita sales territory or country in Europe. However, on the negative side, returns continue to average about 30 per cent. As hon Members will see from the Lottery Account Estimates at Appendix D of these Estimates of Expenditure, the performance of the lottery in the last calendar year was very disappointing in terms of forecast outturn which was very much below the traditional figure of about £500,000. Hon Members will be aware that this is the type of disappointing result that I have been forecasting for a long time, in fact, as far back as the first few years of the GSLP administration. The cause is very simple. Because there is a large amount of returned tickets which are unsold, the Government depend to a very great extent, on prizes being included in those tickets which were returned and therefore for that prize money not being paid out. Last year, however, this did not happen and a larger number than usual of prizes were won by the public and consequently, the overall result of the lottery is, as hon Members see from the Estimates, disappointing. On the other hand, Government welcome the fact that a larger proportion of prizes than usual were won by the public. A number of meetings took place last year with the Gibraltar Government Lottery Committee and with the Lottery Agents Association in order to consider improvements to the present lottery format but so far, no new formula with which the Government are satisfied will promise a more successful lottery has been evolved. Consideration was given to appointing a consultant to carry out an in-depth study of the lottery with a view to making recommendations to improving or restructuring it. A suitable person was recommended by AELLE, the European Association of State Lotteries and Lottos. However, Opposition Members may be glad to learn that the Government did not consider the proposed cost of such a consultancy to be economically viable and therefore it has not been undertaken.

In the last few months, the Lottery Section and its ancillary storage facilities have been moved to new temporary facilities in Town Range. I feel I have to record that the ever-popular in lottery circles and elsewhere, Mr Peter Borda, retired this year after 17

years in the Lottery Department, and a noteworthy overall 42 years service as a civil servant.

Gibraltar was once again represented, in May in Malta, in its own right at the AELLE Conference.

Mr Speaker, I am also pleased to announce that a major innovation this year will be the live televising of the fortnightly lottery. As from the next extraordinary draw to be held on the 5th July, GBC will be providing live coverage every fortnight of the lottery. This will mean a slight adjustment in time and the lottery will now be transmitted at the new time of 12.30 pm.

Mr Speaker, at the stage where I will finish with the Government Departments and move on to my other responsibilities, I would like to record my appreciation at the work that is carried out every day by management and the staff of all the Government Departments for which I have political responsibility. Most of these civil servants work in the background unnoticed by the general public and they carry out their duties quietly and efficiently behind the scenes. Thanks to their efforts the work of my departments is carried out, by and large, smoothly and on schedule.

Mr Speaker, I now turn to my responsibilities for broadcasting. As announced by GBC in April this year, its services were re-launched as from the 1st June, that is, yesterday. As from today GBC is providing a two and a half hours TV transmission at lunch time and a three and a half hours transmission during the evening. Hon Members will no doubt recall that when this was announced the intention was to provide three hours at lunch time and four hours in the evening and I regret to have to inform the House that the missing half hour which was the Euro News slot that GBC intended to provide has been blocked by political action from Spain using Television Española as the major shareholder in Euro News and therefore this will not now be carried out. Mr Speaker, to clarify the position, I do not want to give the impression that the line has been drawn and that the situation is closed. The Government have been asking for support from the British Government on this and there is contact and pressure by

the British Government and there is still some hope that the matter could be resolved. But at the moment it is not happening. GBC's new TV programme scheduling policy provides for an increase in the number of local programmes. The GBC plan is that over a 14 month period the number of local productions will be increased to over 20 programmes per week.

As part of the re-launch, the GBC establishment has been increased and six new posts have been registered with the ETB. Additionally, freelance employment opportunities will be available. The Plan submitted by the Corporation envisages GBC adopting a more commercial approach at, may I say, the insistence of the Government. The projection is that after the initial period, a gradual reduction in the level of the Subvention should be possible. As part of this more commercial approach, Government have agreed in principle to a Cash Incentive Scheme under which employees will receive a cash bonus if agreed targets are achieved. The details of the Scheme are still being worked out and are not finalised and obviously not yet agreed so I will not be able to provide any further information at this stage. I must also add, Mr Speaker, that at selected times non English language programmes will be included in the TV programme schedule.

Coming back to the Cash Bonus Scheme, again to avoid any misunderstanding, the Scheme will be designed to be self-financing in that it will come from savings and will not be an additional cost to the GBC budget or, for that matter, to the Government subvention to GBC, by implication.

The much awaited replacement of the Medium Wave Radiator and its transfer from the existing location in Wellington Front will soon be finalised. In fact, if hon Members look up the Rock as they go past the Casino they will see the aerial sprouting half-way up the Rock face. Work on the project is well advanced and is planned to be completed by the end of the summer. The FM transmitter network has also been reinforced, and recently the 92.6 FM transmitter was re-sited from Signal Hill to O'Hara's Battery. This move now locates the transmitter at its internationally co-ordinated location. The Corporation is embarked

on the digitisation of its radio programme making facilities and the first phase was completed by the end of May 1999.

In the financial year just ended, the Corporation received a Subvention of £800,000 and a Supplementary Subvention of approximately £17,000. The latter was to meet the costs of the Annual Pay Award. The provision in this year's Estimates is £817,000, the same as the total Subvention for the year 1998/99. Additionally, Improvement and Development Funds have been earmarked for use by the Corporation to fund capital expenditure.

Mr Speaker, I now move to the area of telecommunications, where as a direct result of my ministerial responsibilities, I am Chairman of both Gibraltar Telecommunications Limited or Gibtel, and Gibraltar Nynex Communications Limited, otherwise known as GNC.

Once again, the major issues last year, as indeed they will still be in the forthcoming year, have been the difficulties with the numbering plan as a consequence of the non-recognition by Spain of Gibraltar's 350 geographical code and, secondly, the stop and start nature of the merger negotiations between Gibtel and Nynex. I have kept the House informed on both these issues so I do not intend to speak further on either of these two matters.

Coming to matters in respect of the individual companies themselves, dealing firstly with Gibraltar Nynex who, this year, specifically in June 1998, established the first link using FLAG to Cable and Wireless. Subsequently two further FLAG links, one a 2Mbit link on behalf of Gibtel and the other on behalf of GNC itself were activated offering direct fibre connectivity with Telecom Italia.

The growth of the Internet services launched by GNC Networks continued, and by the end of March 1999, the number of Internet Customers subscribing to the company had increased to well over 1,000 and a number of corporate customers had also been connected. Service has proved to be fast and reliable and is continuously being upgraded and improved. Bandwidth for the

services doubled from 256kbits to 512kbits in November 1998, both to Washington and London.

In December 1998, the Company announced that an agreement had been signed with IBM for the purchase of a £1.6 million Services, Software and Hardware contract. The Integrated Customer Management System or ICMS, is a sophisticated customer care and billing product that runs on IBM's AS400 platform. It will expand considerably GNC's current customer care programme to include automatic service provisioning, flexible billing, fault management and credit management. A new telephone bill format has been introduced and, as a consequence of the ICMS, per second billing will replace the current use of the meter unit.

During the course of the year, the first new chip phone cards were produced and included an issue celebrating the 40th Anniversary of Radio Gibraltar and the Football World Cups from 1966 to 1970. In February 1999, the new digital "Pulsar 50" Public Card phones were connected and installed throughout Gibraltar.

The 1998/99 Telephone Directory was produced on time and was delivered to households throughout Gibraltar by GNC's own employees. A new improved Government offices and Public Services section with an Index was introduced last year and I am pleased to report that the current year directory is well on the way to fruition.

In December 1998, the company introduced the Smart Call Services which allows customers, for the first time, the ability to know who is calling or who has called. By dialling 1471, customers are able to hear a recorded announcement of the telephone number and time of the last call. New Smart Call telephones were also introduced. The service was well received by customers. In January 1999, the Customer Services Centre was relocated to Suite 801 at Europort from where it offers customers better facilities in more comfortable surroundings. Throughout the year, the company maintained the ISO 9002 Quality Certificate and its Total Business Registration.

HON J J BOSSANO:

Mr Speaker, the per second billing is intended to apply to what, to local calls as well or just international calls?

HON LT-COL E M BRITTO:

At the moment it is just a change of system of calculating the amount of the bill but it will not reflect a change in the cost of the telephone call. My understanding is that it applies across the board, both to international and to domestic calls.

HON J J BOSSANO:

Surely then the whole concept is meaningless? The whole idea of per second billing is that if one goes one second above one minute one does not get charged the net chunk, one gets charged one second only so it must mean a reduction, otherwise it is meaningless.

HON LT-COL E M BRITTO:

The system is designed in the way the hon Member is saying and can be used in that way but because of the complexities of call charges in Gibraltar in any reduction on one side has to be compensated in some other way and at the moment, the way it is being introduced the cost of a telephone call of 10 minutes now, although being billed on a per second basis, will end up being the same. In the initial introduction it will not affect the level of calls.

HON J J BOSSANO:

Surely, Mr Speaker, am I understanding the Minister rightly in the explanation that when he is saying that there will be per second billing, in fact, there will not be per second billing because even if the unit now is, say, two minutes and one uses the telephone for two minutes and one second, one will not be charged for two minutes and one second, one will be charge for four minutes. So

one may know that one has used it for one second but one will still be charged for the next unit which is two minutes, is that the correct interpretation of what he has said?

HON LT-COL E M BRITTO:

The finer technicalities of how it is done I do not have available here. The point that I am making is that the net result will be that the status quo will remain and a telephone call of x minutes now charged at y pence or pounds will remain the cost of a telephone call in the future after it is introduced but there is the capability to change that at some time in the future.

Moving on to Gibtel, I am pleased to report that the GSM mobile telephone network continued to expand with a growth of 51 per cent during the calendar year 1998. During the year, the Company upgraded its signalling protocol supporting its fibre optic submarine cable route to BT in the United Kingdom and increased the number of circuits on the route by 50 per cent. It also acquired additional fibre optic submarine cable capacity to satisfy customer demand for International Private Leased Circuits. The Company has upgraded its digital microwave route to Morocco to achieve radio diversity and thus offer customers a better quality of service on the route.

A major milestone during the past financial year was the signing of a contract with the Infrastructure Vendor for the supply of a Terrestrial Trunked Radio System otherwise known as TETRA for the provision of service to Gibraltar Government's emergency services. Throughout the year, the Company has continued to reduce rates and re-band telephone charges to most countries for International Direct Dialling outgoing traffic and this has caused reductions of between 15 per cent and 37 per cent per minute. Charges for International Private Leased Circuits were also reduced by 10 per cent.

The Company's commercial success continued to grow and it surpassed all its financial targets as set by the Board for the year 1998/99. It achieved year-on-year volume growth of 26 per cent

incoming and 10 per cent outgoing international Direct Dialling traffic. In line with company policy, the majority of the Company's sponsorship directed at support of the community, was targeted at local youth, cultural, sporting and old age pensioner activities.

HON J C PEREZ:

Is it possible for the Minister to identify the routes that have had a decrease in the international routes that have had the 15 per cent decrease in charges?

HON LT-COL E M BRITTO:

Mr Speaker, I think I have been providing this information in answer to the hon Member's question throughout the year. *[HON J C PEREZ: No, I have not asked him.]* Yes, he has but if he wants it again I will obtain the information and make it available for him.

I am pleased to inform hon Members that both the management and staff at both GNC and Gibtel continue to be well trained, motivated, dedicated and have the right commercial culture to ensure the continued success of each company. The commendable results achieved in 1998/99 by both Gibtel and Nynex are a direct reflection of their efforts.

Turning now to Lyonnaise des Eaux, Mr Speaker, where, as is the case with the other two companies, I am also Chairman of the Board. Currently Lyonnaise employs 104 persons of which 18 are seconded employees of the Gibraltar Government. The company continues to invest in the continuing development of all employees and once again this year there has been particular attention to training in Customer Care and on Health and Safety.

During the last financial year a total of 1,144,854 cubic metres of potable water were supplied. Lyonnaise pumped a total of 3,280,000 cubic metres of seawater to the various seawater supply reservoirs. The sewage pumping stations were operated at 100 per cent availability. The quality of potable water supplied by

Lyonnaise last year has fully complied with the requirements of Directive 80/778/EEC.

Government assigned to Lyonnaise their obligation to purchase water from the In-Town Incinerator. This last financial year this plant has only supplied 176,631 cubic metres of potable water as opposed to the 650,000 cubic metres it is contractually obliged to produce annually. This year has also seen one of the driest winters in this century and the lack of rainfall has made it necessary to reduce the output of the wells in order to preserve the quality and maintain the water levels. Despite these problems, Lyonnaise has ensured that Gibraltar's potable water needs have been fully met. Some £250,000 has been spent on refurbishing the existing reverse osmosis units and these plants have now been successfully re-commissioned.

Investment in replacing a further four kilometres of old pipeline has been approved by the Board of Directors for the coming financial year. Parts of these works, which are to be carried out using traditional open cut method, have already commenced. The remainder, which will be carried out using the very successful pipe-bursting trenchless technology, will commence next January.

The customer contact system which last year I said would be developed with Systech, a Gibraltar company, has already been commissioned and is working well. It is now being extended to link depots by radio to the computers at Head Office and this will enable the company to further improve its management of customer contacts and hence further enhance the services it provides to the public. The company has carried out an extensive exercise to ensure that all its systems are Year 2000 compliant and have developed contingency plans to ensure that it will be able to continue to provide uninterrupted services into the new Millennium. As is the case with Gibtel and Nynex, Mr Speaker, I am pleased to compliment both management and staff at Lyonnaise for a job well done during the course of the year and for maintaining their good level of service to the public.

HON J J BOSSANO:

Mr Speaker, the revenue estimates show, for the first time this year a dividend from Lyonnaise des Eaux. Would the Minister like to comment on that? There is £100,000 as Government income shown from dividends from Lyonnaise des Eaux, forecast outturn which was not in the original estimate and another one for this year. Since he has just finished talking about Lyonnaise des Eaux, can we have some notion of what is the profitability of the company which has enabled it to pay a dividend they did not expect to be able to pay a year ago?

HON LT-COL E M BRITTO:

Mr Speaker, I would have thought the figures spoke for themselves. Lyonnaise has now moved into a position of making some profit and that is reflected in the Estimates. The figures speak for themselves.

HON J J BOSSANO:

The only thing that speaks for itself, Mr Speaker, if the Minister will agree with me, is that a year ago when he brought the Estimates to the House they did not expect to be able to pay a dividend because they did not put it in the Estimates and now they have done and I would have thought, since it is a new item and the Minister has been talking about Lyonnaise, it was something that he would want to tell the House something about the nature of the profits that are being made from the sale of water.

HON LT-COL E M BRITTO:

Yes, Mr Speaker, an additional factor that came into play during the course of the year was that the original formula which had been used up to last year has now been abandoned and a new way of calculating compensation has been evolved with the company and out of this has arisen an indirect result of the profit making.

Mr Speaker, dealing with the Philatelic Bureau, despite the general trend of a decline in other Philatelic Bureaux around the world, the Gibraltar Philatelic Bureau continues to report growth, and the number of standing orders has continued to increase despite the fact that the numbers of collectors in the other Dependent Territories, the Channel Islands and the Isle of Man has declined. The Gibraltar Philatelic Bureau has once again achieved coverage in the UK Press with the John Lennon stamp issue. The profile received by Gibraltar in leading UK National newspapers is virtually unprecedented. The Bureau continues to enjoy a fine level of co-operation with other Small Western European Postal Unions and its links continue to grow and it is now beginning to work with larger Postal Administrations like the United States Postal Service the USPS. They have embarked in the Stamping the Future USPS Project at the invitation of the USPS. Stronger links with Singapore Post have resulted in a joint promotion of our stamps which has also continued to create growth in the number of standing order customers. These links with the Asian countries have continued to grow and more joint promotions are planned. These links have increased Gibraltar stamps awareness in Asia and have resulted in dealers in that area starting to develop and increase the sales and purchase of Gibraltar stamps. Gibraltar maintains its policy of attending all major international exhibitions and has recently attended Australia '99 World Expo and this year it will attend the London 2000 World Stamp Exhibition.

The Bureau is now also working in attracting international organisations and on the use of images of international personalities with links to Gibraltar to be depicted mainly on Gibraltar Nynex Communications Phonecards which the Bureau distributes internationally. Last year the Bureau issued a miniature set in memory of the late Diana Princess of Wales. The miniature set included a 20p surcharge for charity and the Princess Diana Memorial Fund together with some local charities will this year receive the benefits.

Mr Speaker, the Gibraltar Philatelic Bureau is planning an innovation for the coming year and is intending to give a personalised one year's collection of mounted stamps to every new-born child in Gibraltar starting from the 1st January 2000. This the Bureau considers as a way of promoting philately locally and also of giving something to the children of the future.

Mr Speaker, that concludes my contribution on the Estimates.

The House recessed at 5.25 pm.

The House resumed at 5.45 pm.

HON J C PEREZ:

Mr Speaker, the Minister must be very tired after all that, I wonder where he gets his time to fly round the world to so many places with all that.

It has been three years since this Government took office. This is, in effect, the third budget. In looking at the sums of money we are being asked to appropriate for the recurrent expenditure in the coming year, we must necessarily analyse the state of Government finances and the state of the economy and in doing so look at the last three years and what, if anything, has happened.

Because I have a good memory I can vividly remember what some supporters of the party in Government and, indeed, Government Members were saying in the run-up to the 1996 General Election. The impression was being created then that Gibraltar was on the verge of economic collapse; that borrowing for infrastructural projects was higher than was prudent and that the harsh realities of life necessitated an easing of tension with our neighbours so that the economy could benefit from a normal frontier situation. The public scaremongering was indeed much harsher than I had depicted. I remember a well-to-do lady stopping me in the street and telling me she had been warned by supporters of the GSD that it might be wise to withdraw her

savings from Government debentures since the total collapse of Government finances might lead to her losing her investment altogether. At that time, of course, interest on debentures was higher than interest from investments in many banks and building societies. Regrettably for many, including a lot of senior citizens, this is no longer the case. The perception created then was that Gibraltar was at the end of its tether, nothing could have been further from the truth. The reality is that the estimates presented before the House today are a vindication of GSLP policy over eight years of Government. When the economy was turned round from an MOD dependent one to a vibrant, energetic and fast growing economy led by the private sector, when huge infrastructural investments were necessary so that the capacity to service that private sector was readily available, how could the finance centre have grown if Nynex had not happened as my hon Colleague, the Leader of the Opposition, said in his intervention? Or OESCO, for that matter, or Lyonnaise des Eaux for that matter? All this happened in parallel to an ambitious social programme which opened up educational opportunities for our students like never before, transformed the Health Service which finished up triplicating its annual budget, created a scheme to protect and enhance the standard of living of our senior citizens and did away in one stroke with the housing problem via an ingenious scheme contrived by my hon Colleague, Mr Bossano, which is still today referred to as the 50/50 home ownership scheme and which is supported by the Government but not really supported by the Government. Of course, the £10,000 allowance went with that.

Mr Speaker, much is talked about today about tourism and the tourist product. Despite repeated accusations that we did not have a policy in this area, we opened up new tourist sites; transformed the Gibraltar Museum; the Alameda Gardens; the nature Reserve in the Upper Rock and commenced a programme of beautification of the city centre which culminated with the planning and initiation of the Main Street pedestrianisation which was to be financed partly by the private sector and Government Members when they won the election decided to finance it all from the public purse. I heard the Chief Minister say at the end of Dr

Garcia's contribution, "Come back Joe Pilcher, all is forgiven". Perhaps he is right, that statement might be right but not in relation to Dr Garcia, in relation to his own Minister because tourists came to Gibraltar, cruise liners came to Gibraltar, the figures of those years show it for themselves and it happened without throwing so much money as is being thrown today. So really if we want to give credit to someone we have got to give credit to one who achieved the most with the less resources not to the person who has thrown money at everything. I say this, Mr Speaker, because all this happened with an unfriendly neighbour intent on hindering our economic development every inch of the way. This, according to Government Members at the time, was the result of provocation from the Government of the day and things needed to change if the economy was to survive. I do not blame Government Members for the current difficulties at the frontier. If anything, the situation is worse than it was then and the gloom and doom predicted then has not happened although inevitably some traders are passing through hard times. I must however point an accusing finger at Government Members for creating the illusion in people's minds that if they got elected everything would be different: No queues at the frontier; harmonious relations with the Campo Area; a friendly and courteous entente with Madrid and no concessions on sovereignty. Well, Mr Speaker, we in the Opposition have never harboured any illusion that Spanish policy over Gibraltar is and always will be that the price to pay for frontier normality is concessions on sovereignty. It is for us a price we shall never be willing to pay. It seems to have taken the Chief Minister three long years to learn this which is a hell of a long time for an active politician to be on a learning curve. I sometimes wonder, although, if he actually has learnt his lesson since he still talks about the Brussels Agreement affectionately, harbours dreams of civil dialogue with our neighbours and acts as he is still living in cloud nine expecting to get a call from his pal Abel Matutes inviting him to Madrid for a tête-à-tête. Of course a normal frontier is desirable; of course this will impact positively on the economy, but this can only be the icing of the cake. The policy initiated by the GSLP was to build an economy which could grow despite those difficulties. Either Government Members were being naïve

when they created the illusion in people's minds that Spain would be civil towards Gibraltar or they were being politically dishonest. Whichever it was, the GSD set out as one of its main objectives the normalisation of the frontier and of relations with Spain with all the economic fruits derived from such a situation and as an objective that has failed, has turned sour because it was never attainable, Mr Speaker. Here we still are telling the story despite the doom and gloom and collapse.

In looking at what we spent, we must necessarily look at our sources of wealth. I have looked and looked at the estimates and cannot find one source of income which is the result of an initiative taken by the Government or a single investment attracted from abroad by the Government. This, despite their numerous trips abroad and the huge sums of money spent on promotional activity. What we see in the estimates is recurrent income from GSLP initiatives, some of which were criticised by Government Members when they sat in the Opposition benches. If we look at the projected sources of wealth, the future impact on the economy, that is what is new, we can see projects initiated by the GSLP coming now into stream such as is the case with the GE American Satellite Project and indeed the expansion of offshore gambling that is taking place. So despite Mr Caruana's continuous vitriolic attacks on the GSLP and on the record of GSLP Members in Government, despite the fairy tale depicted by his propaganda machine which is more and more verging on the undemocratic, nothing new has happened in the economy in the last three years which can be attributed to a GSD policy initiative.

The Chief Minister's attempt to re-write history will not succeed because there are many of us that see it for what it is and we will not allow people to have the past blurred by scurrilous rhetoric whilst a rosy picture is presented of anything and everything that happened post-May 1996. The truth is that the Chief Minister is governing on the back of the economic and financial success of the GSLP Government and that he knows it full well even if he pretends otherwise.

Mr Speaker, if I may, I will now turn to the matter of arrears in electricity on which I have been asking questions in the House during the year. At the time of the budget last year, my hon Colleague, the Leader of the Opposition, questioned the extra £1 million being forecast in revenue from electricity charges. The Chief Minister then said that the reason for that was not that he expected demand to rise by £1 million, but that he expected to significantly improve the system for the collection of electricity arrears. Let me explain here that the arrears in 1996/97 stood at £4.125 million; in 1997/98 at £5.01 million and that in August 1998, in answer to a question put by me in this House, I was told that the arrears position had grown to £5.33 million, up by £1 million in a year and by an extra £320,000 in the first five months of the financial year. Clearly no sign there that there was any success in the collection of electricity arrears, on the contrary. In answer to Question No. 445 of 1996, we were told that Lyonnaise des Eaux had collected £3.367 million in respect of electricity charges in the first five months of the financial year. When asked whether, based on that figure they still expected to collect the £8.8 million anticipated, both the Hon Mr Britto and the Hon Mr Caruana thought the question was hypothetical. The Chief Minister said that on the basis of a partial figure during the year, one could not assume that the rate of progression over the year would be the same and that therefore the matter was totally hypothetical. This, notwithstanding the assumption made at the time of the budget, for one estimates that is not a hypothesis. It so happened, Mr Speaker, that during that session of the House there was a break of over five days during Question Time and we, in the Opposition, were graced with the opportunity of putting further questions. In Question No. 667 of 1998, I asked for the figure of electricity billing up to the end of August which I was told was £3.647 million. If the billing was £3.6 million and the collection was £3.3 million and the arrears had risen by £0.3 million, it was natural to assume that of the £3.6 million billed, £3.3 million had been collected and £0.3 million had been added to the £5.01 million of arrears. In supplementaries to this question, in the same meeting of the House, the matter of whether Government would or would not meet their target of collecting £1 million of arrears during the financial year was no longer a

hypothesis. With the two figures made available to the Opposition, the Chief Minister could now project into the future. This is what he said, "No, realistically speaking, we no longer expect to collect £1 million of the arrears element in the estimates, that is the truth of it". The Chief Minister seemed to have come to the same conclusion as we had. Lo and behold, we receive the estimate, we turn to page 10 and read the following – Electricity Charges collected by Lyonnaise des Eaux- Estimate £8.8 million; Forecast Outturn £9 million; Estimate 1999/2000 £9.2 million. So despite having been unsuccessful in collecting arrears until August and despite having come to the conclusion that the £1 million target would not be met, the outcome shows that Government have exceeded their expectations by £0.2 million, an extra £200,000. We would have expected that those preparing the estimates would have known how and why this happened. So now we come to the questions put at this meeting of the House. I asked the Hon Mr Britto for the total amount of units consumed in the financial year and the total amount of billing to see whether, against all predictions, there had been an increase in consumption. Billing amounted to £9.306 million and it was explained that the number of units equalling the billing was 99,547,248, that is, units consumed. It was explained that although the figure was lower than the one given last year by the Minister, he had made a mistake during the budget session last year and given us the figure of units generated as being units consumed. This figure, he told us, represented an increase in demand of some three per cent which was in line with the increases in demand over the last two years. Clearly this did not explain the extra £1 million. Mr Speaker, I refer to Question No. 489 of 1999 in which I asked Government to state how much electricity arrears had been collected between the 31st March 1998 and the 31st August 1998 and between the 1st September 1998 to the 31st March 1999. Instead of what I asked for, instead of getting the figure for the arrears, the Chief Minister stood up and gave me the total figure for the collection which was £3.338 million up to August and £5.626 million between September and March, totalling £9.014 million. Although we were told in September, in answer to Question No. 445 that the electricity charges collected up to the 31st August amounted to £3,367,588.92, we got an unsolicited

reply which now gives us the figure as £3,388,390 for the same period, an increase of some £20,000 which one can presume is an adjustment. We are told, however, that the arrears figure which stood at £5.33 million in August stood at £5.295 million at the end of the financial year, a drop in electricity arrears since August of £35,000, not of £1 million. The information of arrears collected in the financial year, although I did call the Chief Minister's office and I spoke to Mr Hook to remind him that he had promised me the reply, has not been forthcoming a week later although it was a mistake on their part for having read the question wrongly and given me the wrong information. So, Mr Speaker, since that figure is not available, I recall the accusations at the time, accusations of words we cannot repeat anymore because Mr Speaker has told us that they are not acceptable in this House, let us say that he was indicating that I was hypocritical and that I was ignorant. Despite having said all that, it is still unclear what the situation is and we will not know until we have the figures for the arrears collected in those periods, although it looks increasingly like the answer lies in Lyonnaise des Eaux being successful in increasing the percentage of collection over billing over the financial year although the figures given in the House in September showed no indication whatsoever that this was happening in the five months of the year. What happened between the end of August to the end of March to change that, if that is the explanation, is an enigma which needs explaining, Mr Speaker. Either the House has been misled in the answers given by the Government to questions put by me during the year or neither the Chief Minister nor the Hon Mr Britto nor indeed the Hon the Financial and Development Secretary have known what was happening or why it was happening despite being responsible to this House for the estimates they present because they were all convinced that they were not going to arrive at that £1 million figure in September.

There is another element on the question of electricity arrears which needs clarification. We were given to understand last year that the contract with Land Property Services for the collection of electricity arrears was to be terminated because it was costing the taxpayer £60,000 per year and, according to the Chief Minister, "In fact has yielded nothing because there is apparently some

difficulty with the databases or the transfer of the databases, or to cut a long story short, Land Property Services are not operating that part of the contract and therefore arrangements will be entered into in that respect". Indeed, no amount of funds were put in the estimates last year although the forecast outturn shows the figure of £63,000 as having been paid to Land Property Services with an equal sum being forecast to be paid in the current financial year.

Mr Speaker, in 1996/97 Land Property Services collected £143,903 in electricity arrears and were paid £59,268 to do so. In 1997/98 they collected £81,712 in electricity arrears and were paid £59,268 for doing so. Until the question of electricity arrears is not totally clarified we will not know how much, if any, electricity arrears has been collected by Land Property Services in 1998/99 although the estimates state that the total amount of electricity charges has been collected by Lyonnaise – I refer hon Members to footnote (i) on page 10 of the estimates where it says that everything shown there has been collected by Lyonnaise.

I recently called the offices of the Chief Secretary to ask for a copy of the contract that was signed with Land Property Services because the Hon Mr Caruana reminded us last year that it had been entered into by the GSLP shortly before the last elections. It seems to me that the contract must surely stipulate something about the performance of LPS in the collection of electricity arrears in relation to the fees paid. I say this because, to date, I have not been supplied with a copy and I am therefore unaware of its content. I say this, Mr Speaker, because the figure paid, for example, to Lyonnaise for the amount it collects which, in this financial year was £164,000 for collecting £9 million, bears no relation with what is being paid to LPS in relation to their performance. I do understand that it is much easier to collect current electricity charges than it is to collect historical arrears but the figures we have available are still low in comparison, although the figure of what was collected by LPS in this last financial year we still have not got. The Chief Minister referred to problems with the database last year. He also confirmed recently that the contract with LPS had not been terminated. Perhaps we can have

some explanation of what it is that is at the centre of the difficulties, whether they still exist or have now been resolved, and to what extent the fault lies with LPS and who it is that is monitoring the existing contract.

Last year I drew attention to the state of neglect of our cemetery and in particular to the overgrown weeds around the tombstones which has been the main complaint by visitors to the cemetery whenever it has been allowed to fall into a state of neglect. The Chief Minister last year chose to ignore my comments. He said there was no truth in them. He instead said it had been a glib reference on my part, went into a self-congratulatory deluge of how well things were at the cemetery and how many people had stopped him to tell him so and ended by saying, "Let us not delude ourselves into believing the things that are said which are demonstrably not in keeping with reality". We did not believe anything of what he said exactly because it was demonstrably not in keeping with reality. I remember the week afterwards a local newspaper showing a photograph of weeds behind which were hidden graves and tombstones not visible to the eye. I reminded the Chief Minister last year that during our tenure in office we had awarded a contract worth some £30,000 for the weed control to be a permanent feature of the cemetery and which had proved to be successful. Ever since he cancelled that contract, which was run by experts in the field of weed control, the place has deteriorated rapidly and is in a worse state than it was, even last year. He has not got to take my word for it, Mr Speaker, he can go and see for himself why it is that people keep on complaining and what it is they complain about. The Opposition, despite the references last year, continue to believe that the state of neglect of the cemetery is a source of public concern.

Mr Speaker, I now turn to what clearly is a source of irritancy and dismay to the Chief Minister which is any comment I might make on traffic. Last year I supported my long-held contention that the proposed changes to the traffic flow in the Upper Town area were dangerous by warning the Government that the City Fire Brigade would be unable to adhere to its standard response time and by reminding them that despite their repeated criticisms of the last

Government for not relying more on experts, they were ignoring the expert advice they were receiving from the Traffic Commission. As is usual of him, the Hon Mr Caruana described my remarks as alarmist and irresponsible. In trying to elicit my source of information, he made glib references to what he termed as "GSLP activists amongst the junior ranks of the Fire Brigade". At the time, the Government were intent to proceed with the planned traffic changes with the signs and traffic lights having been erected a year earlier, some still stand there as a reminder of Government arrogance and stubbornness. Something I said must have struck a chord somewhere because there was an eventual climb-down on the part of Government Members when they accepted that those plans might not now be implemented and that alternatives were being looked at, we still have to see what happens but at least we were given some hope that alternatives were being looked at and that at long last the arguments against the traffic flow plans announced had impacted in someone somewhere and things were being looked at again. But, Mr Speaker, as soon as we see a glimmer of hope sparkle for motorists in the Upper Town area, we get the Government taking long-term decisions in the Lower Town area which has brought about utter chaos in the traffic flow of Gibraltar with no hope of reprieve. The closure of Casemates to vehicular traffic is a grave mistake which can only be remedied by reversing that decision so that traffic will move through Casemates at least in one direction only. No amount of swings and roundabouts to traffic flows in the area will relieve the very real problem being experienced by motorists today. Casemates could have easily been re-developed with a one-way traffic lane passing through it, without this hindering at all in any way any of the Government's plans for the square. We are now told that the opening of Lover's Lane to vehicular traffic will eventually impact on the traffic flow problems along the length of Line Wall Road and beyond. We shall have to wait and see to what extent this is true but I still fail to see how this is going to impact on the area around Waterport fountain when it is exactly the access to Line Wall Road that is at the centre of the problem. Regrettably for traffic in Gibraltar, my criticism of the Government in this area will stand the test of time.

I must also make reference to the insistence of the Government of a policy which they clearly failed to implement fully last year. I refer of course to the mental block of Government Members over the regularity of MOT tests for vehicles over three years old. They were warned and advised by the Opposition before they passed the legislation that EU directives only required that these tests be taken once every two years. They chose to ignore this advice and went ahead with annual tests. I presume that, having acquired statistical data of the number of vehicles requiring a test and the cost of these tests, they presumed that the income derived would be £200,000 which is what they estimated. In fact, the result for the year, as the Hon Mr Holliday himself has admitted, shows the forecast outturn of income from MOT tests to be a mere £75,000. What this reflects is that fewer cars went through the test than those that were required to do so by law. What is odd and needs some explaining, Mr Speaker, is that in 1997/98 when only vehicles over 10 years old and commercial and public service vehicles were required to pass an MOT test, the income derived from these tests is shown as £127,888. How is it then that in the year when many more vehicles are required to pass an MOT test the income falls, rather than increases, to £75,000? There must be something wrong with the figures or is it that as a result of people being able to get their licence without an MOT test the vehicles that used to pass the MOT test before, like the public service vehicles and the commercial vehicles and the vehicles over 10 years old did not go through the system last year either? Because £75,000 is nearly 50 per cent of what the revenue would have been in other years without the vehicles of four years old being included too. This year, Mr Speaker, they are telling people that a booking for an MOT test is sufficient to collect the licence and I am not sure that that is going to work either because the booking can be cancelled and even if one has a booking one can go and take the car and the car might not pass the test. Clearly, if on top of the fact that it was possible to have the MOD test every two years instead of annually, there were on top of that practical difficulties in getting all the cars to pass every year, the Minister has said that the decision is based on safety. I beg to differ with him. I cannot believe that the European Union would pass a directive which is unsafe for motorists. The fact that the United

Kingdom and other countries want to make it even safer is something but for Gibraltar that did not have the requirement of the MOT test and we are only passing it because there is an EEC directive that tells us to, not because we have been looking at safety, is ridiculous that they should have stuck to that policy which in practice is not working anyway.

Mr Speaker, I pointed an accusing finger at Government Members last year when I said that there was a clear attempt to run down the road section of Government in favour of contractorisation. I reminded the Hon Mr Holliday that two years ago he had said that Government were to carry out a human resources audit to establish appropriate manning levels following the repatriation of Moroccan workers within the Government service. Work valued at £2.5 million had been paid to contractors last year. The writing was clearly on the wall for all to see. The Chief Minister went berserk at the suggestion. He told me I was not a very credible hero to espouse the cause of those working in that section. "What we are having to do is give it additional labour resources at least to raise its complement to a minimum viable labour unit", he declared. He carried on saying, "it is not in those estimates but I am sure that like his colleague, the Hon Mr Baldachino goes to Transport House he will be able to inform himself of the intentions there" not in the House, we have got to go to Transport House to find out Government intentions. I do not go regularly to Transport House but I must start doing so more often since it seems to upset the Chief Minister no end. Certainly I am a Member of the TGWU, a longstanding Member of the TGWU so is Mr Baldachino and the Leader of the Opposition for that matter, and I think we should make visits to union headquarters more regular, I must make it a point. According to the Chief Minister I have no interest in the truth. That is what he said last year. The truth is that despite the labour resources audit no extra staff has been employed. The truth is that despite the Chief Minister ascertaining last year that there would be additional labour resources not shown in last year's estimates, but being programmed already at the time of the budget last year, nothing has happened. It is a good thing I did not go to Transport House to verify his intentions, as he suggested, because they must be as

disappointed as I am. The truth is, Mr Speaker, that there were 22 employees in employment in 1998/99; that there are 22 employees in this year's estimates for the current financial year; that last year contractual work amounted to £2.5 million; that in the financial year we have just ended another £2.8 million has been paid to contractors; the truth is that £145,000 was estimated for materials and other costs in the Sewers Section and only £40,000 of that money was spent. That similarly, of £300,000 earmarked for maintenance of highways we have a forecast outturn of £175,000 because there are only 22 industrials in the Sewers and Highway Sections together. If that scenario does not indicate a running down of the section in favour of contractorisation, I do not know what does. Perhaps I was harsh last year when I said the Government had a hidden agenda to run down the section. They are doing it openly although last year the Chief Minister did try to camouflage it by empty promises which he has naturally not fulfilled and he has the audacity to lecture all of us about the truth. The Hon Mr Holliday did say that what did not happen in the first year was the audit that was going to happen in the second year, the promises that were going to happen last year will now materialise in year four. Well, their credibility, frankly, after what they said and what we have got is running very short.

Mr Speaker, the Chief Minister I think said, "Volume of international telephone traffic is a barometer on the economy". Indeed, it is sometimes used as a barometer for the economy but in a place as small as Gibraltar we had to see why that volume occurs because one can have a situation that the operation of Victor Chandler on its own will impact significantly on telecommunications and the Minister might believe that the place is booming and the only one that is booming is one particular client which is the result of the increase in telecommunications. Last year the shareholders of Gibtel and Nynex together received a total of £3.852 million in dividend payments. Government, as a 50 per cent shareholder is a beneficiary of 50 per cent of this income. This year both companies together have paid dividends totalling £3.2 million of which Government have received £1.6 million. On these figures alone, and I am not against investors

getting a return for the money invested, but on the figures by themselves there is a case for Government to go to their partners and say, "It is time to give back to the customer some of the profits we are making". Mr Speaker, the increase in volume, the increase in numbers, the increase in turnover of the company, they are doing very well, and we the public should now start benefiting by how well those companies are doing. When we started it was a slow process, the investment had just taken place and now they are in a position to be able to give back to the public some of the profits that they are making. It is also a worthwhile commercial decision to make against the background of the liberalisation of telecom in the European Union which both companies will have to face sooner or later if the proposed amalgamation does not go through as it now seems to me will be the case. We see how call-back services are here to stay, undercutting Gibtel by as much as 50 per cent in some routes. Gibraltar is becoming uncompetitive in relation to other telecom jurisdictions. There is a need to accelerate the cuts in international charges initiated by Gibtel when I was Chairman and to which the Hon Mr Britto has mentioned today. The cost of these and other deductions in telecom services should be borne by both companies. I criticised strongly during Question Time the acquisition of a computer costing £1.6 million. Whilst it might be desirable to have a computer offering a variance of features, in essence.....

HON LT-COL E M BRITTO:

Would the hon Member give way? He persists, and I have to clarify that, in calling it a computer which gives, I do not know whether it is by design or by accident, but it gives people completely the wrong impression. This is not a computer, a PC that appears on a desk; this is a telephone management system. This will give GNC – it is not just the billing system - the ability, for example,

HON J C PEREZ:

I have not finished, I have not said that.

HON LT-COL E M BRITTO:

Let me finish, it is the second time the hon Member has mentioned the word "computer". Let me clarify it just for the record. It gives, for example, at the collection point, the ability for the girl collecting a bill to actually reprogramme the telephone system in one's house via the telephone management system. It gives a total flexibility that GNC does not have now. It is not a computer as if it were a couple of thousand pounds. It is a complete management system; it provides services; it provides repairs; it provides a complete range of services.

HON J C PEREZ:

Mr Speaker, it is a very sophisticated and expensive computer for the 20,000 customers of Nynex to be able to buy. I am not the one calling it a computer; the press release by Nynex called it a computer and the Minister called it a computer on television when he announced it. Now he wants to make it be something different because I am questioning the expenditure. The fact is that the need has arisen as a result of the billing, even if it is not a billing computer what we are replacing it with. The need has arisen as a result of replacing the billing computer and we could have easily replaced the billing computer without spending £1.6 million which might be desirable to have it but in a situation where we need to come back to a competitive situation, I think it is too much of an expenditure to be able to be borne by Nynex's customers and that is the point I made and it is a point I am making again. It might have many features, in fact, one of the features was the second billing which no plans are there to be able to use one of the features of the computer because of our particular circumstances in Gibraltar. Well, if we have got those particular circumstances and some of the features cannot be used, the more in favour of my argument that is.

Mr Speaker, when we came into office people had to wait 20 to 30 seconds to get a dialling tone. Lines to Spain were completely saturated at peak hours. The waiting list for a telephone was

longer, much longer than the frontier queue is today to give the House a parallel of exasperation. We had to change our outlook. We had to invest in modern technology. With Nynex as partners, we not only caught up but jumped ahead of others technologically. Training, better pay and conditions of service, a modern environment in which to work with, new and sophisticated equipment transformed our telecommunications infrastructure to meet the demands of that private sector that was to be the driving force of our economy. How else could the GSLP have serviced 30 banks in a Finance Centre which depends so much in telecommunications? We got it right then and we are right now when we say we are becoming uncompetitive. One of the ingredients many in the offshore world look at in moving location is the cost of overheads. We now have a reliable service, we now have to work towards a cost effective one. Telecom is a main ingredient of those overheads. Here is an opportunity of relieving overheads from businesses and households in one stroke. It is essential for Gibraltar to try and keep in line, at least in line with the reductions in the rest of the EU if we cannot keep in line with their rates. Mr Speaker, with the EU and with other offshore jurisdictions, moreso with the stiff competition we could be facing when liberalisation hits us as it is going to hit us. Services such as Internet must surely be having an impact on turnover. The time to slash our charges is now. We cannot go and buy a computer costing £1.6 million, the cost of which has to be borne by 20,000 customers when that computer is built to service thousands more customers than we will ever have. The Government, as 50 per cent shareholders of these companies, should be making the case for Gibraltar and, indeed, for the future welfare of the employees of these companies as their monopoly situations begin to disappear. Of course I understand the unfairness of our situation vis-à-vis Spain. We have two cases before the European Commission where it is palpable that the Spanish State is using its muscle against Gibraltar companies in this area too but people, regrettably, buy from where it is cheaper, not from where it is more patriotic. Mr Speaker, we are also concerned at the diminishing number of telephone numbers available. The Hon Mr Britto briefed me recently on this and other matters and I hope he

continues to keep me abreast of any move that might become necessary in this respect.

I now turn, Mr Speaker, to the deal entered into between the Government and GBC which is reflected in the estimates before us. I have to say that the Opposition are convinced that GBC TV still has a very important role to play despite the advent of satellite TV and digital TV. But it is our view that GBC must concentrate exclusively on community television which is what viewers in Gibraltar tune in for since they get a wide range of TV material from films to documentaries to chat shows and 'novelas' in other channels and in both English and Spanish. How South American soaps are going to enrich culturally or in any other way viewers, Mr Speaker, how that can be an improvement on the programmes in BBC Prime escapes me. So does spending money on the re-transmission of a world news bulletin when there are so many other world news services available to the community on satellite. Perhaps on this occasion might be the only one that Spain has done us a favour although I think that as a matter of principle we need to have the right to buy that news service although I am against buying the news service per se, but the point of principle is that if Spain now tries to stop that I think we have got to find our corner for the right to be able to buy that service even if I disagree that that service should be bought because of the material that there is already in other channels. Mr Speaker, I do not know what projections of increased income through advertising GBC have made but through personal experience I just cannot see very much income being derived from advertising for exactly the same reasons that existed there when management advised us to move away from this type of programming and on to GBC and when they advised us again to put the decoders, now we do not need the decoders and the arguments being used over and over again are the same. Perhaps someone in GBC has a magic ball and thinks that there might be a change of Government and the next Government are going to forget the arguments that they have given to the last Government and use the same arguments with every Government and get away with it. But really, nothing that was said in the eight years that we were in office, everything that was said was for moving against this type of programming. I

understand that if BBC Prime can now be received free well we do not need to put our programming on BBC Prime but why we need to buy films and buy South American 'novelas' and buy international news and buy documentaries when we get such a wide range of quality – I would not call 'novelas' quality – but certainly documentaries and educational programmes and news bulletins and news programmes and discussion programmes, we get such a wide range of quality programmes in all the other channels and in both languages, I cannot see the need to spend money on these programmes. I can see a need for community television. Mr Speaker, GBC should bring back discussion programmes on current affairs which disappeared almost completely after the 1996 general election. It might be coincidence but that is the truth. Before the elections there were discussion programmes galore with Government Members who were in Opposition then every night on television; after the election, for whatever reason, those programmes stopped. GBC must concentrate its efforts on the community; people like to see themselves on television – the Chief Minister is a fine example although he also likes to listen to himself even if he is not on the air. Seriously, Mr Speaker, television must become a bit more of what radio is and unless GBC does not concentrate on community programmes, we will have thrown away good money. I must point out here that whilst I am unaware of the difficulties involved in televising the Miss Gibraltar Show, if it is not televised it is a very regrettable situation indeed that this should happen because now that they are moving to supplying community television, it is an event which many Gibraltarians look forward to watching on TV and we hope that they do it and it would be regrettable if they do not.

I should also point out that despite the daily pressures which journalists are under in a small community like ours, it is important that they not only act impartially but are seen to be acting impartially too. There are two sides in this House and we all pay our TV licences and the money we vote for GBC year in year out belongs to all the taxpayers of Gibraltar. I think I ought to make that point, Mr Speaker.

Mr Speaker, the dispute that I understand from the Minister still exists with the postmen at the Post Office is a source of concern. Before the Chief Minister accuses me of being interested in the possible disruption value to Government, as he did last year when I raised the anxiety within the civil service over parity, let me say that as far as I am concerned, the sooner this problem is resolved the better for all concerned. I do remember, however, that an exercise was carried out in 1992, when my Ministerial responsibilities included the Post Office and Industrial Relations, as far as I can recall a postman's walk was measured in weight of mail carried. I say this because what I have read about this matter in the press seems somewhat different to me and is perhaps at the centre of the difficulties being encountered with the proposed review of the postmen's walk that we read about. Mr Speaker, I value greatly that Government Members have taken account of my suggestion that the Post Office should not be moved from its present location and that that decision has now been taken. It might have been for other reasons or it might be said to be for other reasons, but I would like to think that they are convinced of the arguments that I put here in favour of retaining the Post Office in a listed building such as that one and I am glad that that is going to happen.

Mr Speaker, the estimates reflect a worsening position of the income derived from the Gibraltar Government lottery down from £396,354 to £86,000. Quite apart from the fact that I seemed to be luckier in winning prizes for the Government with the unsold tickets returned than the Minister, there is still a need to review the situation and take bold decisions and I think that the Minister recognises as much. Last year he said he was trying to find a solution or formula but had been unable to produce anything tangible from the questionnaire he had sent out. I think although he has said that he has consulted the Committee and there are no solutions available, the time has come for the Minister to take the bull by the horns if we are not to see the Gibraltar Government lottery disappear altogether. I remember he had a lot of innovative ideas when he was in the Opposition and what I, as Minister, should be doing with the lottery and I was not doing more because there had been enough changes to it. Enough time

has passed and I think the lottery needs urgent restructure and urgent changes and I think it should not be left for more than the coming year to see some of those changes come through because eventually as people die the 'fijos' are left behind, there are no new people taking up those fixed numbers anymore; the general sales every week are less and people are buying more lottery elsewhere, that is a fact. The problem with the lottery is that people are spending more money on lottery elsewhere and one needs to try and make it more attractive so that people buy. It is a good thing that it is going to be televised because people are more aware that the lottery is on, they see it and they remember more the Gibraltar Government lottery so that is a step in the right direction. Perhaps I would suggest to the Minister that some sort of campaign should be made as part of the Millennium to enhance it. For example, when it was the anniversary of the Gibraltar Government lottery there was an exercise that five extra cars were raffled, I am not suggesting that that should be the case but given that we have got the Millennium celebrations it is a good excuse to do something on the lottery which might give it a new impetus and I put it to Government Members, since we have not, like the Hon Mr Gabay says, been allowed to participate in any of the decision making, putting a humble suggestion forward to see if it is taken on board, do you not think so? I regret that the Chief Minister is complimenting me too much, I must be doing something wrong, Mr Speaker.

Mr Speaker, I would like to give notice and I think the Leader of the Opposition has already spoken to the Hon Mr Britto during the tea break, but I intend raising at the Committee Stage the downward trend from 1997/98 of the expenditure in relation to the electricity purchased from OESCO. Although the figure between the forecast outturn and the estimates for the current year is only £200,000 as compared to £600,000 between 1997/98 and 1998/99 – my figures must be wrong. Anyway, the point being that what we want to know is whether there is a smaller commitment to purchase electricity from OESCO because we are producing more electricity or is it the fuel prices that is the result of that variation and, if so, why is that variation different to Waterport and OESCO? Is it because the OESCO contract is

better and we buy fuel at a more expensive rate? Because if one looks at the two figures for fuel, there is not a relationship between them. Anyway it is a matter that I will raise at the Committee Stage.

Mr Speaker, I am not going to try and fill in the light-hearted remarks that were always attributable to my hon Colleague, the late Mr Mor in his budget contributions. There were always unique light-hearted remarks from him which sometimes made hon Members laugh and at other times the Chief Minister used to get upset. But I could not, even if I tried, be in any way as satirical or as good-natured as the hon Member was. All I can say about this budget is that it can be described as a party thrown by the Chief Minister which does not meet the expectations he himself has created in people's mind but which is being paid by the efforts of others, Gibraltar deserves better. Thank you.

HON P C MONTEGRIFFO:

Mr Speaker, Gibraltar faces both opportunities and challenges in terms of its economy but I want to start my contribution straightaway by focusing on one of the major challenges that has taken up a good deal of the Government's thinking over the last year and will be a matter of concern as we go forward. That is the issue of tax harmonisation and Gibraltar's response to it. I raise it at this early stage because whilst the issue of tax harmonisation is often raised in the context of the finance centre, its implications are much broader than that. Indeed, much of the inward investment that comes to Gibraltar is attracted by a fiscal regime which is accommodating to that investment and therefore the issue of harmonisation of taxes is of much broader relevance than just financial services. Where are those threats coming from, Mr Speaker? They are coming essentially from three separate areas. Firstly, formally and institutionally, from bodies like the EU, the OECD and G8, I will have something more to say about that in a moment. Secondly, some of this pressure is coming from domestic political agendas in some of the large economies. Thirdly, the age old problem of revenue shortfalls in the large economies and the desire of exchequers to raise more taxes. But

the main initiatives, as I said, are institutional initiatives, those that are being channelled through the EU and through the OECD. I will deal first with the EU code. As hon Members might recall, the EU tax code was produced in December 1997, it was produced under the auspices of Commissioner Mario Monti and that code seeks to attack business tax rates. The code is a voluntary code; the code is not a mandatory legal requirement and the Gibraltar Government's response to the code has essentially been as follows: firstly, and most importantly, tax is our constitutional responsibility. We are competent in tax matters and therefore we jealously guard the ability to remain fiscally independent. Secondly, as I indicated, since the code is voluntary we see no need to adopt its requirements. Indeed, the code is a political commitment entered into by the UK and the point made by Gibraltar to the UK is that whilst the legally binding commitment to Gibraltar is a matter for Gibraltar, we have to look at in a certain light because we believe in meeting our legal obligations, a political commitment by the UK is not one that attaches itself to Gibraltar. Thirdly, and quite explicitly, Mr Speaker, we do make the point in response to the perceived threat of the code, that Gibraltar has a fiscal regime, a privileged fiscal regime applying to international business that enshrines a 25-year guarantee. This is an important marketing and substantive point. We make this point on every single promotional effort that we make. Just to place it on record, what we say this means is the following: both exempt and qualifying companies certificates are issued for 25-year periods under the legislation which structures those arrangements and, of course, in the case of exempt companies that legislation goes back to 1967 so it pre-dates our accession to the European Union. Therefore, irrespective of any rollback provision which the EU code might seek to impose on tax regimes, it does not, in our view, affect private rights acquired by companies that have exempt or qualifying certificates. The position is that Gibraltar has prepared a position paper in response to the EU tax code which we have sent to the United Kingdom and which the United Kingdom is using in its discussions in respect of the code. As hon Members may be aware, pursuant to the code a working committee has been established, chaired by Don Primorolo, the current Paymaster General in the United Kingdom; a report has

been prepared by Mr Primorolo which has been submitted to Ecofin; four Gibraltar measures have been identified by the United Kingdom in respect of the code. In other words, four measures that it is alleged fall foul of the code. The second stage of this exercise, which is due to be completed in September 1999, will look towards what steps would be taken in meeting the requirements of the code in the context of specific measures that have been raised. The OECD report, Mr Speaker, is an entirely separate initiative. The OECD report was issued in April 1998, in other words, it is just over a year. This report is not limited to, of course, EU countries, it has a much broader application, in fact, if memory serves, at the last count the OECD had written to 37 different jurisdictions. The OECD code again attempts to attack what it describes as unfair tax competition and like the EU code it basically highlights things like a tax system which is only available to non-residents and in respect of international business. We have received, Mr Speaker, correspondence from the OECD pursuant to that report. The Government of Gibraltar have responded, on the 5th February, to that correspondence from the OECD setting out the Gibraltar arguments which essentially fall into two categories. Firstly, a complete rejection of the philosophy underlying the report and, secondly, why in the case of Gibraltar these measures are not ones that Gibraltar feels are relevant to it. Gibraltar, as an economy, is so small in global terms that if both the EU and the OECD are really concerned about global trading issues, the position of Gibraltar can hardly be a consideration which is very relevant. We have been invited by the OECD to attend a meeting in Paris where these matters are being discussed. The Gibraltar Government have not at this stage accepted that invitation, in fact, there have been a series of meetings which we did not attend but we have put to the OECD an alternative agenda to that which they proposed upon which terms we would be prepared to enter into a dialogue. We have not had yet a response from the OECD to our suggested agenda items. The position of Her Majesty's Government is, I think on record in this House but I will repeat it for the benefit of hon Members, the UK is committed to both the OECD and the EU initiatives. Indeed, HMG invited Gibraltar to a seminar of overseas territories that took place in September 1998 at which the Chief

Secretary and the Finance Centre Director attended for the purposes of explaining to OTs how the UK saw this agenda moving forward. A further meeting is, in fact, also planned and Gibraltar is considering how and, if so, in what form the attendance by Gibraltar will be structured. Of course, Mr Speaker, as hon Members will be aware, the Overseas Territories Report recently published by London mentions tax harmonisation, both the OECD and the EU code as initiatives that have London's endorsement and which they expect to see the OTs adopting. Let it be said, before I move on, that of course one particular provision of the EU code and which we see as being relevant to the OECD is that the code should only be extended to dependent territories which goes beyond Gibraltar as a EU dependent territory to such extent as this is compatible with constitutional arrangements. That is, basically a paraphrase of the relevant paragraphs and that, Mr Speaker, is also language to which we attach ourselves in seeking to deny the applicability and implementation of those measures to Gibraltar.

HON J J BOSSANO:

Is that caveat the UK's position or the EU's position?

HON P C MONTEGRIFFO:

In the code itself there is wording that says that Member States shall encourage the extension of these rules to dependent territories, that would include, for example, Bermuda and the Cayman Islands outside the EU but to such extent as is compatible to constitutional relations.

A third and perhaps even more serious issue affecting tax are recent developments in the area of state aid. The brief history of this is as follows; on the 11th November 1998, the European Commission issued a communication entitled "The Application of State Aid Rules to measures relating to direct taxation" in which it basically set out its views that tax measures in Member States that had the effect of breaching State Aid Rules should be done away with. The EU Commission has written now to the United

Kingdom detailing various measures that include Gibraltar measures that allegedly breach the State Aid Rules, four Gibraltar measures are actually identified. The important point here is to understand that in the case of state aid we are talking about alleged breaches of articles of the treaty which are therefore legally binding, in particular Article 92. So the problem here is potentially much more serious because if it was to be the case that a tax privilege, a tax structure is deemed to be in breach of state aid, there is an enforcement mechanism under the articles, under the treaty which would mean effective sanctions against a territory that did not comply. As I have indicated, Mr Speaker, the UK has written to us seeking, well the EU has written to the UK highlighting four Gibraltar measures, the UK in turn has written to us seeking our own views. Our response is still being considered but it is obviously a matter that will require careful handling and, among other things, we are taking obviously legal advice on some of the issues raised. In dealing with these particular issues, Mr Speaker, the Government also continue to look at these matters as they develop very closely. Our views have been very well made clear to the United Kingdom and we have lobbied as necessary both directly and through correspondence but it is a matter of some serious concern and if the agenda on any of these fronts gathers pace, there would be a need for some fundamental reassessment of the tax position as we move forward.

Turning now specifically, Mr Speaker, to the different areas of commercial responsibility which I cover, I would like to really categorise this contribution into four main headings. Firstly, commercial affairs generally, including EU funding; secondly, those aspects of telecommunications for which I am responsible; thirdly, property development and land issues; and fourthly, financial services. As the House is aware, within the DTI is also housed the Statistics Office. I am not going to deal with that in any detail as the Chief Minister has indicated that the Statistics Office is an area that we are looking at. It will be the subject of further review and it has an existence which actually goes beyond the DTI, it services the whole Government machinery.

Dealing with commercial affairs, firstly. The DTI sees its role as basically being a unit to facilitate and encourage both local business and inward investment. In that sense we are very open to contact with the trading and commercial community in Gibraltar, indeed we have very good contacts with both the Chamber of Commerce and the Federation of Small Businesses. The Business Advisory Unit which has begun to function now in its fully-fledged form this year, has been a tremendous help in that process of communication. In the six months between September 1998 and February 1999, it dealt with 71 substantive clients. In other words, there were 71 client files opened; many of those looking for EU and Gibraltar Government funding but many others in terms of general queries and of course there are other telephonic and more casual queries which are not included in that figure. There are many issues, Mr Speaker, that affect local trade and Opposition Members have suggested that the Government are not doing enough. Well, I am the first to concede that more can always be done but I think it is, as I indicated in answer to a question from one of the Opposition Members earlier last week, it is not the case that the Government's measures had been ill targeted or ungenerous. The measures have been unprecedented; the measures have had a positive effect in ameliorating some of the external factors to which we have been subjected and there are further measures indicated by the Chief Minister in his contribution which we do genuinely believe are of assistance to business and, in particular, small business.

One important area is the area of trade licensing and I want to reiterate the priority we give to the form of that regime. I indicated the significance we attach to this last year and hon Members might well ask why it is taking so long to actually get this settled. As I indicated again at Question Time, it is a complex issue. That complexity is highlighted by the hon Members' own experience when they sought to introduce amendments to the Trade Licensing Ordinance back in 1993, amendments that were never actually brought into effect. But let us be clear, it is the health warning that I simply want to stress that there is no panacea in a cross-frontier registration system. This will not solve the problem of competitiveness as perceived by trade in its entirety. It will help

in certain respects, it will also indicate where perhaps Gibraltar business can develop, whether there is a market but it will not be a panacea because at the end of the day any registration system which imposes costs on a business accessing certain services either from Gibraltar or from Spain, is a cost that will go to the consumer and a cost that will therefore go directly towards competitiveness.

In the area of EU funding, Mr Speaker, there are two essential issues that we face in broad terms. One is to spend wisely the remaining balances in our current funds and, secondly, to pursue the prospect of additional funding for the future. Although I have given details of the balances that are available to be spent, I think for the record, it is worth reiterating those so that hon Members understand the issue that we are facing in this respect. My figures, Mr Speaker, are with regard to purely the ERDF part of the expenditure, not the ESF expenditure which, as hon Members know, are really the human resource and training measures. So the balances outstanding as at 31st March are, in respect of Objective 2, £1,820,999; with regard to Konver funds, £1,148,830; and in respect of Interreg, £233,750. Those figures are, of course, purely the EU figures, those do not take into account the matching funds that Government would have to add in respect of any public sector project. The Hon Dr Garcia made some play about the fact that not enough publicity had been given to these funds with regard at least to the private sector companies but yet perversely he criticised us quite illogically in having spent £780-odd in information pamphlets precisely to disseminate this information. We have made efforts to explain to industry and commerce what funds are available and although we ourselves are not satisfied that there has been sufficient take-up, we do think there has been a reasonable measure of success. The figures are the following - total figures in respect of companies that benefited from these schemes, 12 companies are benefiting from Objective 2 monies and 15 extra companies benefiting from Objective 2 monies but under the small grants system that we set up precisely to facilitate and accelerate the process of approval, so there is a total there of 27. There are no private companies accessing Konver funds; the applications have been put through to Objective 2 exclusively. As

far as the Gibraltar Enterprise Scheme is concerned, the Gibraltar funded Government scheme, there have been three approved projects and five pending approval. The hon Member also talked about costs being too high in Gibraltar and everybody can agree with that but I was not sure, Mr Speaker, whether the point he was making was that we should subsidise further those costs that are high or whether we should make redundant people in, for example, the electricity generating capacity in Gibraltar which, as we all know, is probably peopled by more staff than is necessary to produce electricity; it was an unclear suggestion the hon Member was making. All I would say to him is that, as he might not know, Gibraltar has and does continue to subsidise water production, the Gibraltar Government subsidise water production. We have, at least until this year, historically also subsidised electricity production. So unless the hon Member is seriously suggesting that taxpayers' money should be used to further subsidise the provision of utilities which are one of the major costs to business then I do not see how that circle can be squared. The reality is that the only way in which costs of that type in the longer term can be reduced is by increasing the size of Gibraltar's economic cake by simply growing the economy so that the lack of economy of scale which is essentially one of the problems that affects us, can be remedied. Mr Speaker, the policy of the DTI continues, as I said, to encourage inward investment; to encourage diversification. We are satisfied that we provide support to those wanting to establish businesses in Gibraltar, the Victor Chandler operation is a good example of a powerful investment and commitment to Gibraltar; Cammell Laird as well was a useful addition to the facilities here; the bottling plant that opened fairly recently is another example of that; and I want to raise, as a fourth example, although it has caused us some irritation, the beverage powdered plant which we had hoped would have been open by now and which has been delayed for reasons to do with the structure of the building. We think, however, that most of those problems have been resolved and we can look forward to a fairly early opening of that facility.

The second issue, Mr Speaker, I want to turn to is telecommunications. I do think that telecommunications has a very strong future in Gibraltar in the modern world where e-Commerce and other types of economic trading make locations much easier to operate from, I do think that Gibraltar rightly focuses on telecommunications as a vital priority for the future. The first area I want to deal with in this respect is the regulatory authority in telecommunications which we are planning to establish. As hon Members might be aware, in order to comply with the provisions of the European Union directives in liberalisation of telecommunication services, we are required to establish a national regulatory authority which must be independent of the telecommunications organisations. The Government also have an obligation to establish other regulatory authorities in respect to a whole series of other EU directives. As a result, Mr Speaker, the Government have decided to establish a single regulatory authority which will be known as the Gibraltar Regulatory Authority which will be responsible, among other things, for the regulation of telecommunications, broadcasting and postal services. We hope to bring legislation to the House to establish the authority in the near future. This year's draft estimates makes no provision as such for the authority. Hon Members might note that in Head 7, subhead 16, there is expenditure shown only for the telecommunications designate regulator and his current supporting staff. There is minimal provision, under subhead 17, for the running of the division which will require adjustment if the Gibraltar Regulatory Authority is brought into operation this year. There are various funding mechanisms that Government are considering in respect of the authority, one is the possibility of it working by subvention and not as part of the departmental estimates of the DTI. Specialist personnel employed by the Gibraltar Development Corporation will staff the Gibraltar Regulatory Authority. Whilst on the issue of telecommunications, the House will be interested to hear an update of the three satellite projects that we have been pursuing. The progress on these is good though, again, not as speedily as we would like. But briefly, Mr Speaker, the position in respect of each of the projects is as follows: as hon Members may recall, GE Capital Satellites have filings to Gibraltar for orbital slots around

Asia, Europe and Africa to provide broadcast and fixed services. They plan to launch their first satellite early next year which will provide broadcast services over the Far East. The company has already taken office accommodation in Leanse Place to establish a satellite control centre which will be responsible for ensuring the health and safety of satellites licensed from Gibraltar. Last month GE held a number of interviews in Gibraltar for technical posts which have been advertised in the local press. They have described the response to the advertisements as very good and that they are happy with the quality of the applicants that they have seen. Once GE makes its selection, the staff will undergo a training period lasting several months in the United States. The staff will be in post before the satellite control centre comes into operation at the end of this year. The next stage of the GE project will be the construction of the antennas on the site of Lathbury Barracks. In this connection, Mr Speaker, we are finalising the building licence with the lease attached, that will identify the area in question and the terms upon which the land will be made available. As hon Members know, GE has both an outer space licence and a teleport facility for the site at Lathbury Barracks. This particular venture is not very labour intensive, GE expect to recruit a total of around 15 employees.

The second project, Mr Speaker, is that currently known as ACTEL, previously known as ELCO. This is one that the Government hope to see in operation by early next year. This has filings to produce mobile telephony in Africa, essentially actually mainly in Zimbabwe. The company is planning to establish its primary billing facility and network control centre in Gibraltar and in this connection expects to start recruiting staff before the end of the summer. ACTEL envisages 12 staff members by the end of this year increasing to around 30 for the second phase, once it has launched its own satellite. The project has been delayed because of time in securing financing but is now progressing at a faster pace. A site at Lathbury Barracks has been earmarked for ACTEL and the Government, again, expect to sign a building licence and lease as well as granting to ACTEL a teleport facility licence.

The third and final project is that that is known as the ASC project. That is actually the first one that came to Gibraltar at the time of the hon Member's administration but actually has been the one which has taken longest to come to fruition. It suffered a setback in 1996/97 as a result of difficulties with the satellite manufacturer which had been eventually resolved in favour of a new satellite deal with Lockheed Martin. ASC has four filings through Gibraltar: they plan to set up their first satellite in 2001 and they will have in Gibraltar their satellite control centre, network control centre and primary gateway. They already had, Mr Speaker, a teleport facility licence which means they are paying a substantial fee for that, with a site earmarked at Lathbury Barracks. Originally ASC were going to build that facility in front of the retrenchment block at Lathbury Barracks but pursuant to further discussions we have had with them, they have agreed to take over the retrenchment block and therefore will be refurbishing that in its entirety. The Government are in final negotiations with ASC on the building licence and the lease.

In conclusion, on the satellite projects, let me say that the rental the Government are seeking for the satellite projects, for the land they will be using at Lathbury Barracks is a commercial rent. We are seeking rents of £2 per square foot for undeveloped land and £1 per square foot for sloping land. Built up areas like, for example, the retrenchment block, will carry a rent of £4 per square foot. We have therefore actually moved quite significantly ahead of I think the discussions that the previous administration were having with some of these companies, certainly with ASC which provides for a much more nominal rate of rental.

A final word, Mr Speaker, before I move from telecommunications, in respect of e-commerce. I mentioned the importance that this issue can have for Gibraltar. The United Kingdom has issued a white paper on e-commerce and the UK is itself considering legislation on e-commerce. The European Union is also looking at the area and papers from Brussels on this issue. We are certainly very interested in engaging the commercial community in Gibraltar and the telecoms companies in exploiting what could be a very interesting niche for Gibraltar.

The third area, Mr Speaker, is the area of property development and land issues. The property market in Gibraltar, I am talking about residential here, remains buoyant, probably because of the fact that property is still in scarce demand, there is a scarcity value which is in high demand and, secondly, because interest rates are low by historical standards. Indeed referring to the discussion that took place with the Hon Mr Baldachino on 50/50 and the desirability of having 50/50, if we actually compare, for example, interest rates, in 1991/92 we will find that very often 50/50 would have taken place when there was a much higher interest rates cycle than would have been the case today. I think indeed in 1991 they would have been about double of what the current rate is, certainly towards the end of the 1980's and therefore in practical terms it is almost as though one has a 50/50 today in terms of the cost towards somebody servicing a debt. We are keen to promote home ownership further and I want to run quickly through some of the more significant housing projects that are already in train or will shortly be commencing. These essentially are as follows: firstly, the recently announced Peninsular Heights development at Westside – that will be a block of flats consisting of 82 units; secondly, tenders for both Old Naval Hospital and Gun Wharf have now closed and the Government will adjudicate those tenders shortly – in the case of Old Naval Hospital the requirement was for residential development and in the case of Gun Wharf there is a possibility of residential development, it is therefore highly likely that there will be significant further residential stock being created in pursuit of those tenders; thirdly, a tender has been finalised in respect of the refurbishment of the Town Range Barracks – that will create a number of new units for home ownership; fourthly, the Officers' Quarters at Lathbury Barracks pursuant to a tender adjudication is now to be developed for housing; further developments at Queensway Quay, not just the new phase of Cormorant Wharf which is going up but indeed the development of town houses up Ordnance Wharf and, finally, a range of smaller developments, for example, the town houses going up at Engineer Battery which are probably targeted to this higher segment of the local market.

Mr Speaker, we also give enormous importance to the issue of industrial premises and commercial premises generally. Now we have a situation where EBC and New Harbours, at least with regard to the ground floor and first floor levels, are essentially fully tenanted and there is a great demand for more light industrial units. We have accordingly recently announced two new industrial parks; the first one will be located in the area of North Mole. This will be an industrial park with larger units dedicated to activities such as like manufacturing and, hopefully, to activities that will benefit from being close to the port for export related purposes. It is envisaged that there will be six units built in this area ranging from between 205 square metres to 560 square metres with capacity for a roof car park for up to 92 vehicles. In view of the fact that we have received interest in further car stock piling operations in Gibraltar, this facility will be built with the provision to allow for three further floors of car parking to be added to it at a future date. It is estimated that 500 vehicles could be accommodated in that additional storage capacity. The second industrial park is in the area of Lathbury Barracks, as I indicated during Question Time last week. This will be a larger development. We are looking towards between 36 to 42 units, depending on the final scheme details when those emerge and it will range from about 50 square metres to 150 square metres. The costs of constructing these developments will be borne both by the Gibraltar Government and by the European Union through structural funds. A final word on land, specifically in the context of the Lands Memoranda and the position with the Ministry of Defence. As was indicated last year, the Government give priority to the renegotiation of the Lands Memoranda with the UK. The current memoranda are entirely archaic and are constituting a real obstacle towards the release of further land from the MOD to Gibraltar. Negotiations have started although they have not got very far yet but they have started. The issues at stake have been identified, the Gibraltar Government's position has been made well clear to the MOD and we expect, over the next few months, to get into a detailed discussion with the UK MOD/HMG more generally on making progress on this front. It is an urgent priority for us, Mr Speaker, there are properties – and I highlight some that the hon Members have themselves focused on, for example,

'E' Block and Cumberland and Tower Buildings, that are lying utterly unused either by the MOD or the civilian community precisely because of highly technical issues, in this case the issue of freehold title and what type of tenure the MOD does or does not have.

The fourth area I want to deal with in my address is financial services. We think that we have good cause to be satisfied with the progress in financial services over the last year although there are clearly a significant number of challenges that the industry is facing. The starting point perhaps should be the survey that we undertook of the industry in July 1998, not yet a year ago. We had a good response rate, 61 per cent of those that received questionnaires replied and that was a useful exercise in identifying the strengths of Gibraltar as seen by the industry, obviously weaknesses as well, where the markets were growing, it gave us a snapshot of the industry. We do not suggest that the exercise was entirely scientific because when one has a response rate of 60 per cent, 40 per cent is a large non-response rate which therefore could affect some of those results but we do think it is an interesting exercise which is an indicator of the industry's thinking in this area. I want to highlight a few main areas. Firstly, employment.....

HON J J BOSSANO:

Can I ask the Minister, how was it decided which businesses were in the industry and which were not in terms of who was asked to participate? Are we talking about lawyers, accountants as well as banks?

HON P C MONTEGRIFFO:

Yes, Mr Speaker, we drew up a list of those that we regarded as being within the financial services industry, the sectors were: accountancy firms, banks, company formation management and professional trustees, fund and portfolio managers, insurance companies, law firms and then others. There was a smaller section of people that are related to financial services that might

not fall into those sections entirely. So it was a widespread selection of those regarded as being within the financial services industry.

Three matters I would like to raise, Mr Speaker, are the following. Firstly, the survey did show strong employment prospects. We actually got a result that said 111 additional jobs had been created which is about a 9.5 per cent increase with regard to those respondents, especially strong in banking curiously. As I say, I do add an element of qualification, I am not saying that this is scientific but I think it does show a genuine employment growth trend in a positive direction. Secondly, in growth markets, it identified a number of important markets and growth areas for Gibraltar, putting aside the Gibraltar domestic market which many identified as being of continuing interest to them, Spain, UK, Portugal, Germany/Scandinavia – we have put those together because it is linked – and Switzerland appeared as five primary market areas for Gibraltar and our promotional effort, as hon Members know, have been partially geared in response to that. Thirdly, in terms of action points, the five top action points that emerged were firstly, promotion; secondly, tax reform; thirdly, public sector reform; fourthly, political solution and fifthly, training. The overall biggest threat that appeared from the survey was undoubtedly the tax factor, making reference again to both the EU and the OECD and it is interesting that it dislodged the political situation from number one in terms of the industry's own fears. Against this background, as I say, we believe that we have good cause for being satisfied with the progress that this industry is making and our major strengths which in our view explain to a large extent why this industry is flourishing are the following: firstly, the investment that we have made and continue to make in a very sound regulatory infrastructure. Gibraltar has, over the last few years, invested heavily in that area, a lot of scepticism felt by the industry four or five or six years ago, that greater regulation would mean a closing in of their opportunities, has been replaced by the recognition that high standards of regulation are actually a very major selling point. This year's Government subvention to the Financial Services Commission is in the order of £200,000, a powerful demonstration of our willingness to underpin the cost of

regulation even though, of course, the aim must be to make the Financial Services Commission self-financing and not requiring support from the Government. Secondly, the strong political commitment to this industry and to certain specific issues that are vital to this industry, for example, confidentiality. The Government have gone out of our way and will continue to go out of our way to preserve those issues like confidentiality which are vital to the continuing success of the centre. Hon Members will know, for example, the length that we went to accommodate the mutual assistance directive in a way that was sensitive to the issue of confidentiality in tax matters. It is a similar sort of mechanism that hon Members used during their term of office when Gibraltar transposed the all crime money laundering legislation but decriminalised tax offences. That strong political commitment to preserve competitiveness in the centre is recognised internationally, many other centres that have a broader political agenda which does not give so much priority to financial services might not go to the lengths that we go in protecting the industry. Thirdly, we like to believe that we have developed a genuine triangle of communication between regulator, industry and Government which is working very beneficially. Even in small issues this is evident. The Gibraltar finance centre premises which is the focal point of the Government's efforts in this area has had 116 meetings of associations or companies using those premises as guests of the Government. This facility which has been over-subscribed, we did not think that we would really attract these numbers, is one which has had the secondary benefit to the Government of actually seeing people more often, coming into contact with the associations, actually being able to develop a rapport with associations and companies at much closer range than has been possible before.

There are a couple of major issues facing the industry in the year ahead, apart from the issue of tax and I would like to take those step-by-step. Firstly, the transfer of exempt and qualifying companies authorisation to the Department of Trade and Industry. This will be an important move in providing a one-stop shop concept, we hope that we will derive benefits from siting the authorisation of exempt and qualifying companies in the same

location that is also committed to strategic development and promotion of the centre. Secondly, and perhaps most importantly, the need to make further progress on the passporting agenda. As hon Members will know this has not been without its complications. As we speak, there are two issues this House is aware of, on which we expect developments and positive news from London. Firstly, is the arrangements to enter into a post boxing facility in respect of notifications given by our authority in Gibraltar to other Member States. As hon Members will recall when this matter was last discussed, whilst Gibraltar companies clearly have the right to benefit from passporting currently in insurance, some Member States have questioned the ability of the local Commissioner to send the notification, the bit of paper directly from Gibraltar to another authority in the EEA saying that that process of notification should go through the UK because it is the UK Member State that is responsible for us. That has not been a problem with some of the business that we have developed in insurance, indeed the Financial Services Report for this year lists insurance companies that are doing business in the EEA and where this problem of notification has not arisen but there are some States where this notification problem is an issue and we are looking towards London entering into an arrangement with Gibraltar to provide a post box facility for such notification. In other words, a purely administrative arrangement which would require London forwarding a piece of paper transmitted from Gibraltar, sent by Gibraltar to another EEA authority. That is very important not just for insurance passporting but indeed for all the other passporting labels coming because we will have the same problem when it comes to banking and investment services passporting. The second issue, as I mentioned, is banking passporting itself. Gibraltar has now done everything that the UK has asked of it including the commencement of a deposit guarantee scheme and therefore we await upon the UK to respond to Gibraltar positively with an announcement. The third issue is the transposition of the 4th and 7th Company Law Directives. The drafting in respect of these directives is at an advanced stage. We have, again, taken up a consultative process with the industry; we are in continuous discussion with London as to the terms of the transposition but there are two points that I

want to highlight and which represents the Government's position. Firstly, the transposition must and will be undertaken in a way which is as sensitive as possible to the local industry, to a very large and important part of the financial services industry. Secondly, that we do regard it as important whilst the matters are not linked formally, we do regard it as important for the local industry to be able to see positive progress on passporting issues so that the benefits of EU membership are clearly appreciated and therefore both the 4th and the 7th and passporting, whilst not being connected and we have never made a formal connection, I think in the context of the repositioning of Gibraltar's centre which is something that we are committed to, requires that contemporaneously progress be made on a parallel basis on both fronts. The fourth issue, is the so-called Savings Directive. In other words, a directive which is currently being negotiated by Brussels which.....

HON J J BOSSANO:

Can I ask before the Minister moves on the directives which is, I take it, the directives on the publication of company accounts, the impression that was generated from the industry over the years was that this would have a very adverse effect on the use of Gibraltar for the registration of companies and yet, in fact, the registration of companies continues to increase. Is it that perhaps that fear was exaggerated in this area as it appears to have been in the area of regulation?

HON P C MONTEGRIFFO:

This is not an easy question to answer because one cannot anticipate what the possible effect might be and effect is often the result of perception rather than reality. I think there is a serious issue here. I think the industry is right to raise the fact that publication of company accounts is not something that private clients that use companies would automatically volunteer. Having said that, I think it is also true that there are mechanisms which would allow a good part of the work to be retained notwithstanding the transposition of the directives and therefore I

think it is just part and parcel of the continuing process of adjustment that the industry has to make, in particular as a result of our EU membership. It is an issue that requires sensitivity. It is not an issue which the industry is simply exploiting without any due consideration to the issues but I think that it is not a black and white situation, I think if the industry adapts properly a large slice of company management work will be retained even though this is not a measure that we would have brought to legislation of our own volition.

As I said, the fourth measure that will take up a lot of our time will be the Savings Directive which is being negotiated in Brussels with Member States. As hon Members may recall, this is a directive which seeks to introduce a withholding tax on the interest of bank deposits of EU residents. Gibraltar has made very strong representations to the United Kingdom in respect of this particular measure. The United Kingdom itself is on record as saying that they would not accept any directive which affects the eurobond market which would otherwise be attacked also by this directive. The Chancellor has gone further in actually saying that the UK will not accept any directive which requires the imposition of withholding tax and this is an important matter which should be understood by the House. It is an important point that should be raised in the House, that the proposed directive does not require the imposition of withholding tax but would give Member States a choice of either having a withholding tax or exchanging information with the other authorities in the EU and therefore it seems a possibility that the UK might adopt the directive by seeking to have the exchange of information option applied to it and not the withholding tax option. That would raise serious issues for Gibraltar itself because whilst nobody would want to see this directive being implemented, if it was implemented Gibraltar would want to have the ability to choose whether to go and have a withholding tax but retain confidentiality and retain the need to exchange information rather than go to the exchange information route. So it is an issue that we are alive to and which we shall obviously continue to lobby on.

Fifthly and lastly, we introduced in Gibraltar this year the Guarantee Deposit Scheme for banks. A major challenge in the year ahead will be the introduction of an Investor Compensation Scheme for investment services. In other words, the equivalent that we have for banks for investment companies. That will be a necessary prerequisite of investment services passporting.

In summary, Mr Speaker, with regard to financial services, we think that the sector has performed well. As the Chief Minister indicated yesterday, the company corporation figures are actually extremely good, they have been growing steadily over the last four years, the highest having been achieved in 1990/91, very much on the back of the Spanish property market boom and that situation. We are seeing continued diversification in this industry, we are seeing much more than just classical Iberian peninsula banking work, the industry is becoming much more international and much more quality business is being attracted to Gibraltar. On promotion we think we have a good story to tell and we will continue to tell it, in particular post the Edwards Report into Financial Regulation in the Channel Islands and the Isle of Man. Hon Members might know that the Home Secretary, Jack Straw, commissioned a report into the Island's regulatory authorities; the report makes recommendations many of which Gibraltar already meets and therefore we have a very strong message to take now to the international community when comparing Gibraltar with centres that are more established but are actually less developed than us in regulatory terms. For example, one recommendation of Edwards is that their Financial Services Commission should be independent of politicians, well that has been the case in Gibraltar since 1990 when the Financial Services Commission was set up.

In conclusion, there are three points I would like to make in reply to some of the matters raised by Opposition Members. Firstly, is the general state of the economy and the employment figures. Clearly the Opposition are not going to agree with the Government that the employment statistics demonstrate that the economy is buoyant and the value of some of these statistics is even questioned by the Government. We have clearly demonstrated and conceded that the quality of statistics requires

improvement. But some facts are incontrovertible, Mr Speaker, operations like Victor Chandler; like the Cammell Laird operation; many new jobs in certain sectors like the satellite projects; that does show an economy producing jobs. It might be producing those jobs in what is a musical chairs exercise, that might well be happening but that is an extremely valuable exercise for a number of reasons. Firstly, presumably if those jobs were not created people would be unemployed, but secondly and hopefully more importantly, it is also showing diversification in the employment base. I think we are seeing in Gibraltar a wider range of skills being developed as a result of people moving out of old type employment into some of these new ventures. Secondly, the Leader of the Opposition made the point that they had created, in their time, a great number of new assets but that we have created no assets and I think he was referring to physical assets and in that respect I think that a proper assessment of the GSLP's term of office, a fair and proper assessment is to give credit for investment in things like the telecommunications infrastructure and in land reclamation, et cetera. But, Mr Speaker, that is a too narrow definition of assets, the assets are more than just physical buildings and we believe that we are investing in assets which are very important and indeed vital to exploit some of the facilities that exist in Gibraltar. Training is probably the biggest asset that we believe we are more focused on than the Opposition Members ever were. We heard from my hon Colleague a list of some of the initiatives that have been taken, again to get training going in a meaningful way is an extremely difficult task but the training and skills is the vital asset that is needed to develop Gibraltar further. Indeed, the issue of the difficulty of recruitment was one of the matters highlighted in the Financial Services Survey as one of the problems that companies have, the inability to actually recruit locally and then the problems we have in actually importing personnel. Secondly, investment in things like regulatory infrastructure. That is a real asset, a real asset which is producing dividends in terms of perception, in terms of our capacity to respond much more proactively than before. Thirdly, the asset of confidence. There is a confidence in Gibraltar which we believe is markedly better than was the case in 1996. Opposition Members I know refuse to accept the analysis that in 1996 Gibraltar was in a

very dire situation but I would ask them to search in their hearts and give credit to the Government's point just like we give credit to the investment they made in the physical infrastructure, the reality is that much of the benefit of the physical infrastructure that the hon Members put in was not exploitable in the Gibraltar that we inherited in May 1996 for a whole range of reasons and there is now a higher degree of confidence, producing more job security in what is admittedly an uncertain world, nobody has a job for life in the private sector but there is more job security in many of the sectors in the private sector. Mr Speaker, what would the hon Members have us do? Would they have us reclaim more land to build more offices to lie empty? If Europort is two-thirds empty they should accept the logic that the priority would be to fill it by training people and having a regulatory infrastructure to do so rather than building more office accommodation. So there must be logically a point beyond which physical infrastructure has a limit. The third and final issue I want to raise is this question of our vulnerability vis-à-vis Spain and the movements at the frontier, et cetera. I think it was proper for the Leader of the Opposition to raise this issue as a matter that requires debate and I think it is more often than not ignored as an issue which has to be addressed. I was not sure how he suggested it should be addressed, whether it should simply be factored in as a consideration which had political consequences or whether it should be factored in as a consideration which meant that we would have to build up effectively a sieged type economy, not vulnerable to Spanish pressure but Gibraltar is not an island and when we go out promoting Gibraltar one of the answers we have to give when we are asked about, "Yes but you are three square miles, have you got capacity to grow?" the response is, yes for a number of reasons including that Gibraltar is not an island because one has to be able to understand that in order for the Gibraltar economy to grow, the ability to access facilities in Spain is an interesting and important consideration. Let me give the House an example of what I mean. The current employment base in Gibraltar is x thousand, unless we believe that the whole purpose of economic development is to keep Gibraltarian residents in employment, unless we believe that is the only purpose of economic development then we must look towards

increasing the economic cake by making employment grow. Employment can only grow in Gibraltar significantly if we also have access to the hinterland in a variety of ways, that is the reality in terms of accommodation, leisure facilities, et cetera and therefore Gibraltar does stand on the horns of a dilemma. Our capacity for growth is enhanced by use of the hinterland but the greater the use we make the more vulnerable we become. I suppose that the only way of dealing with this paradox, with this dilemma is to steer a careful course which we hope that we are steering, which is a careful course between exploiting what that inter-relationship can bring for Gibraltar and can give benefit to Gibraltar but also having a very close focus on having a second economic capability which is not vulnerable to these external pressures. But it is not, Mr Speaker, an issue which I believe is fully resolved in anybody's mind. It is an issue that I think Gibraltar will have to grapple with as we go forward and it is an issue which I think is right for it to have been raised which the Government are conscious of and which requires therefore this careful balance which I have described. Thank you, Mr Speaker.

HON A J ISOLA:

Mr Speaker, for those members of the finance centre industry who have been listening to my hon and Learned Friend's contribution, the fear of the 4th and 7th Directive as the potential disaster looming round the corner drawing closer, the news that he has given us this evening of the other factors that are now bringing their weight to bear at a rate which I think far exceeds what those in the sector had expected, will bring many who were already concerned to worry even further. The difficulties that the Government face on the tax codes, on the OECD Reports, the EU Reports and, more importantly, Article 92 provisions are indeed serious. As the Minister rightly said, the difficulties that we would face if any of those were kicked in and given effect in Gibraltar would be far more widespread than the financial services sector as we all know it and refer to it in this House. I think that the problem is indeed serious and I welcome the Minister having discussed it and informed the House openly this afternoon. I think

that there is a need and I know that the Government have, certainly in respect of the 4th and 7th Directive, consulted with the sector, taken on board, wherever possible, the recommendations and I take comfort from the words of both the Minister for Trade and Industry and the Chief Minister who in his address referred to Government implementing or transposing these directives in the most sensitive way possible to give the best possible protection to the industry. I think that will give comfort, but it is clear that the sector is facing a very difficult crossroads in its development, in its repositioning, whatever one wants to call it, because it seems that every time we take a step forward to try and better the position that we are in, not one or two, but in this case four or five very large walls are put in our way any one of which could knock us out. I think that there is a general desire within the EU and the OECD to stop the very business we professionals are in as a community, like many other small islands and small territories in the Mediterranean and elsewhere. If I can just reply to a number of points made by the Minister for Trade and Industry. Yes, we did put in assets and yes, to the extent this Government are concentrating on other assets and in some cases improving the assets that we put into place ourselves. He mentioned the importance of the regulatory environment in respect of telecoms. Yes, without that one cannot get the next bit that comes afterwards and I think that the regulatory aspects that we implemented in financial services are also indeed the bedrock of that growth in the financial services sector that he has been telling us about this afternoon. The growth indeed as my hon Friend has told me, has been a constant growth in the sector throughout and the point of regulation is, it is wrong to give the idea or impression that regulations have come into place since 1996, obviously that has not been the case. Indeed, everything right up until the regulations that were published on insurance passporting which opened the door ultimately to passporting in 1997, were prepared prior to that date and yes, this Government have brought in many directives transposing financial services EU directives many of which we, in the Opposition, have in fact not supported for reasons that we have felt had some merit. I know the Government disagree but we have been saying to this House, "look, before we go any further in wrapping ourselves in directives, in transposing

EU provisions which bring about more obstacles to the financial services sector, we should know and we should be satisfied that in fact when the time comes we can take the benefits from that”.

HON P C MONTEGRIFFO:

Would the hon Member give way? I would just like to clarify one point which I think is important. When he discusses benefits of EU membership he would normally think of passporting and that of course is the primary purpose of much of this agenda. It is important for him to understand that the mere fact that we meet EU standards because of the directives has a very strong secondary value, namely the endorsement value of a centre that meets these levels. For example, the business that we are attracting from Switzerland, which I informed the House of last week, a large number of Swiss portfolio managers that come to Gibraltar to do portfolio management, are not interested in passporting at all but the fact that we have a passporting badge developing, not just in investment services, but we have a passporting badge developing is of enormous comfort and endorsement to them and therefore there is that secondary credibility issue which should not be underestimated.

HON A J ISOLA:

Yes, I accept that. The primary purpose as the Minister has said himself, was the passporting issue. Yes, we have been telling this House that we have reservations that passporting because of the experience that this party had had in Government since 1992 of being brought to a wall, and saying, “when you climb that wall you can passport”, having got to that wall we climbed over, another wall was put in front, climb that one and then one can passport. This was a consistent theme running through the lead-up to the insurance passporting in 1997. We have not been saying that alone. People in the sector, people in the industry have been saying that. Indeed, the Chief Minister can nod his head but the resolution of the Bar Council two years ago which still stands today called on no further directives to be implemented until our position and our rights had been clarified. Why? Well, for the very

simple reason, Mr Speaker, that to put in all these rules and regulations, to transfer all these directives that give us supposedly the opportunity to take a benefit from it like every other jurisdiction within the European Union and not be able to passport which is the prime reason for that, we seem to have put into place all the rules of the game but we are not allowed to play. If we are passporting, certainly the reports and the information that we have, only yesterday there was an example and that one perhaps may be a little unfair and harsh as it relates to Spain in the newspaper, that may have been a little harsh but we have, from the sector itself information of nothing but difficulties in passporting insurance services. Up until now that is the only badge that we have since 1997 and I can refer the Government to what my hon Colleague said in 1997, that is directly in relation to passporting, “we are confident that passporting in insurance will be confirmed very soon”, - indeed it happened - “the elections in the United Kingdom undoubtedly caused delay in the appropriate confirmation being delivered and whilst it is not our job to prejudge formally the results of the auditing, we have confidence that we will have the appropriate confirmation shortly.” - that happened - “That is important because we are very keen to move on to the next two phases of passporting which will be banking and then investment services and we are keen to achieve both these targets within the next year to 18 months maximum. There is no reason, as a result of the effort that is now being put into financial services development, why it should not be able to work to that ambitious timetable. He then goes on to talk about the offshore European jurisdiction and those ambitious targets were set in 1997. We are now two years later, we are now no closer, as far as we are aware, again that is perhaps not fair because we now know that the legislation that is required is not primary legislation but we still have not had that confirmed two years on and in respect of investment services we do not know or have an indication from the Minister, we know that that is in the future but we do not know how that will progress from then on. Indeed, if we look at the three aspects of the proposal intended passporting, what benefit in the form that they take have they given us to date? It may be early days to be able to examine the results, but certainly in terms of insurance which we have been passporting,

well the Minister can hold up the sheet, I imagine of what are licensed companies. When I asked a question in this House as to how many of those companies employ any people from Gibraltar, the answer has come none. Fine, one could wave one's arms in the air but the position, Mr Speaker, is that in looking at the development of the finance centre, obviously EU Directives and transpositions of directives, is not something that the Opposition lightly say we are against but we said that for reasons that have been expressed and expounded by the industry itself and that is how is this going to come into effect? How are we going to be allowed to do it? In practice, will we be allowed to do it? What we are seeing in fact is that in practice on the first one, two years down the road there are difficulties. The Minister can say, "Well, of course there were going to be difficulties", yes but at what stage can we truly say that we are over those difficulties and over those walls that I was referring to earlier? Mr Speaker, our views on passporting have been and we said it prior to the 1996 Elections, that it was very important for Gibraltar to be able to passport but that that right had to be clearly given. What we have got up-to-date is, we have been given passporting rights certainly in respect of insurance, banking we will see when that comes. We do not know. Can the Minister tell me if it is coming in six months? The only forecast we had was in 1997 and we were told that it was 12 to 18 months away. That is a piece that I have just quoted from his intervention in 1997.

Mr Speaker, the importance of the credibility, I think the Minister referred to as a secondary benefit of passporting is undoubtedly important, clearly is very important as is obviously the regulatory framework that was put into place and in looking at where the industry goes from here, bearing in mind the information the Minister has given the House this evening on the potential problems with the EU and the OECD and everything else, I assume from what the Minister said and what he has done in the past, that he will submit these reports to this committee that is advising Government to consult with the industry on how best to deal with the responses to the OECD, to the EU, to the state aid, correspondence and representations that have been made. Those areas, Mr Speaker, I think puts peoples' concern on

passporting almost into oblivion, the pressing need is to deal with those problems and try and maintain some business whatever that may be. I agree with the assessment made by the Minister on the implementation of the 4th and 7th directives. I think it is fair to say that it is difficult to prejudice as indeed it was pre the regulation and it will undoubtedly lead to a reduction of some business. That measure is just a question of judgement, it is very difficult to put any sort or any form of accuracy into that but it is a factor that does seriously concern the industry. Indeed, Mr Speaker, the Ecofin Report of the 25th May, which are the minutes of the meeting of the 25th May, were referred to by my hon Colleague, the Leader of the Opposition, and he referred specifically to the part of the Spanish delegation's request for a tax avoidance group to be set up. It is clear where those guns are pointing. It was also interesting to hear the Minister refer to the not proviso but the possible comfort, if that is the right word, that can be taken in all these areas and that is the constitutional arrangements that are in place between Overseas Territories and their Member States of the different groupings. Certainly, that is one area that we may be at an advantage in respect of some jurisdictions but that is one area where we would certainly hope to have some comfort. We do not know from what the Minister has said whether in fact any formal response, although the response has been given to Government of its own representations that have been made in writing I think he said also orally and indeed to the lobbying that has been carried out in the past 12 months whether in fact the UK has given any indication as to whether there is any possibility of any derogations, any exemptions or anything like that which could give the industry comfort. I would be interested to learn whether the response that we have received from the UK is something that should give hope to the industry or perhaps more concern to the industry.

Mr Speaker, in respect of the marketing that the Government have been embarking on recently, certainly marketing the financial services sector is important. The only question that we have raised in this House is the way in which it has been done, is it perhaps the best way? Again, I suppose there is leeway of a learning curve in respect of different jurisdictions, it seems that

Switzerland visit was successful. It seems the Portugal trip was not as successful as they would have liked and we have not heard a response to the United Kingdom trip but I am sure we will hear in the near future as to whether it was successful or otherwise. I am sure that will soon kick into action. But the one thing that the industry has commented, certainly in respect of the efforts that have been done up to now, is the lack of time that they have had in responding to the invitation from Government to participate in that marketing effort. Indeed, the letter that was circulated to the legal profession apologised for the shortness of time from the member of the Finance Centre Council who circulated that correspondence. Obviously he felt, as other people felt, that the arrangements that were being made did not give people in the industry sufficient time to plan as to whether they wanted to participate. One of the important things in marketing when one is going abroad to the UK, as an example, is that people in Gibraltar who would accompany the Government as part of their marketing effort, would wish to make contact with people in the area to see if they are available to come and hear whatever it is that is going to be said. Certainly the shortness of time makes it difficult not only for the Gibraltar participants to see whether they can attend but also to fit into people's diaries outside and I think wherever possible more time needs to be given. Certainly in the case of the Portuguese trip, Mr Speaker, we do not think that the way it was done was the best way for it to have been done. We do not think that the targeting was done properly. We do not believe that advertising in English-speaking newspapers, targeting the British Chamber of Commerce is particularly good when one is going for perhaps intermediaries who are legal, accounting or banks. It seems that that would have been the more appropriate sector to target rather than people that were already there, that may have accounted, I do not know, for the lack of numbers attending those seminars.

HON P C MONTEGRIFFO:

Would the hon Member give way? Mr Speaker, I like to believe I am modest enough to take on board what I think are constructive comments from the Opposition Member, but I do not think I can

accept on the chin the statement that it was just a learning curve, and well, had we known better everything would have been different. I think that is also not entirely correct, Mr Speaker. I think that these things are not easy to put together as I think the hon Member will know from his professional background. There is a hit-and-miss aspect to some of these initiatives but in terms of value for money it is much more valuable for me to be two or three days out of Gibraltar in a four year term, in Portugal or in Switzerland or in the UK, raising the profile of Gibraltar, than being in my office pushing paper really as a glorified civil servant which is what Ministers have tended to become since 1988. Whilst it would therefore be bigger or less a success and whilst there are lessons to be learnt always, I certainly do not want to let the hon Member get away with or give the impression that we accept on our part any fundamental flaw in planning. Yes, there are lessons to be learnt. Portugal was undoubtedly the weakest of the three events, both Switzerland and the UK went very well. Government take a risk in inviting the private sector to come along. We could very easily just go off, the Government Delegation of the Minister and the Finance Centre Director and an assistant to go off, do these things and then not expose ourselves to people in the industry seeing how these things operate, but we take that risk because we think it is valuable for people to extract some benefit from these trips. So, Mr Speaker, whilst accepting the spirit in which these comments are made, I do not want the Member to go overboard and allow him to give an impression which is erroneous.

HON A J ISOLA:

Mr Speaker, by referring to the learning curve I was being lenient and trying to give the benefit of the doubt to the Minister. I am not sure whether in fact it is better for the Minister to spend his four days with five people in Portugal or to be working in his office. I believe he would be far more productive in his office than speaking to five people on one day in Portugal but that is a value judgement on how one would regard it.

Mr Speaker, in rounding up on the financial services sector, I would say that certainly there are, as the Chief Minister described it, challenging times ahead in the industry. I think that is putting it very, very nicely. I think there are extremely difficult times ahead for the industry and indeed as the consequence of what the Minister has said, and I have already referred to, the knock-on effect on other sectors not directly related to the financial services sector, it is enormous cause for concern and we would certainly hope, in the Opposition, that Government will leave no stone unturned in their representations in ensuring that whatever happens at least allows Gibraltar to, not even benefit but just to have a field in which it can play, having complied by the rules and now being told it is not allowed to play. Mr Speaker, we would certainly hope the Government are successful in their representations, in its lobbying efforts and would hope that they will work with the industry to fight in whatever way possible, the proposed changes which could render the finance centre in Gibraltar, as we know it, redundant.

Mr Speaker, in respect of economic development, I will not be too long on this because there really is not that much to say. The measures that Government have introduced to assist business in terms of the rent, the rates and it is interesting because one of the points that the Minister raised when he talked about the rent reductions being brought into place was that he hoped that the Government reducing the rent would have a knock-on effect and that the private sector would reduce their rents in some way at some stage in the future. Mr Speaker, that has not happened. As the Minister then said in the House quite rightly, the rents and leases are based on market rents prior to today, normally three or maybe five year terms and in some cases tenants are saddled with leases which have upwards only rent reviews which are minimum cost of living and market value if it is higher which it obviously is, going even further up. That clearly has not happened and therefore when the Opposition look at the measures that have been implemented in terms of rent, one of the measures that the Minister said, and I quote, "We believe that the reduction in Government rents will over the medium term help to suppress private sector rents and that is good because the private sector

rental levels have essentially been assessed as to what was the high property market value of four or five years ago. Leases do not make provision for reductions in rent, they typically make provision for rent staying as they are or increase their market value and very many commercial rents are not at market value levels as we would understand in 1997. They are indeed properly at the market values, as I understood in the late 1980's or early 1990's and we think that this move will help to suppress the level of rent in the private sector." Well, unfortunately, Mr Speaker, and I say unfortunately because it is regrettable that it has not happened and the knock-on effect of that would have been obviously perhaps a reduced burden of rates because it would be linked to the rent, that may have also been reduced to help further but the measures that have been introduced, the import duty restructure, it is disappointing to see that Government are not monitoring how those changes to the structure of import duty have impact because the Chief Minister did say, not just at the Chamber of Commerce but in this House, that these measures were intended to help visitors to expand, to create more jobs. Mr Speaker, that is what is in Hansard, and that is what has been reported in the press as far back as November 1997. I think maybe even November 1996, when he addressed the Chamber of Commerce. Having said those things and then not having monitored whether in fact they have produced more jobs, whether in fact they have helped businesses to expand, to take up more area, really as the Minister himself said at the time if those things do not happen then the measures have been a failure. Since then, Mr Speaker, the position seems to have changed and the Government are saying, "Well, it may have given businesses some extra space, cushion factor I think it was, to take on the strong pound." Mr Speaker, we believe it is important when assisting businesses which is what the Chief Minister yesterday was saying, to assist small businesses we do not believe there is any point in implementing measures if at the end of the day the Government themselves do not even know whether those measures have been effective because if they have not been effective then surely the Government should be thinking, "Well, if we wanted to help businesses and the measures we have implemented have not helped the businesses, then surely should

we not be looking at ways in which we can?", which is what the Opposition have been saying, that in assisting business the measures need to be targeted and that means, at the end of the day, following that targeting up with monitoring what is actually happening. Mr Speaker, the rates was another measure that was referred to and in that case also we at the time said that the discount would help businesses that are doing well to do better but not those that are doing badly and cannot afford to pay the rates themselves. So in effect the measures that have been continued yesterday by the reduced poundage, I am not certain if I heard the Chief Minister rightly yesterday if indeed that extra poundage will only apply if people are up-to-date or pay on time.

HON CHIEF MINISTER:

If the hon Member will give way? As I think I explained, so it is more a case of the hon Member perhaps not having heard me, the reduction in poundage applies to all businesses to whom it applies. The sectors to which I said it was applied but it is not related to prompt payment. In other words, it is a reduction in poundage, not a discount from the bill.

HON A J ISOLA:

I assume that the change to the poundage will require a change to the Public Health Ordinance and perhaps we can see that in a little bit more detail then. But yes, I understand what the Chief Minister has said that, in fact, it is the poundage which will mean that those sectors will have the new rates. So the position will, in fact, be that those businesses in those sectors that get the reduction in the poundage will if they pay on time get the 20 per cent as well.

Mr Speaker, moving on to the port. Again, it is an area where there is increased activity, we welcome obviously the increased activity, particularly the continued growth and expansion of the bunkering services. In a way, when looking at the port and the Port Study, in particular, we still do not know, after the Port Study is completed which is now, I think, I am not sure, every year or

year and a half but that was made available to Government and since that time we have had these two committees, one of which has been, I think the Port Steering Committee, the other was the General Port Committee, what in fact will happen in the port. We hear of the transshipment facility. In answer to questions in this meeting, the Minister told me that the question of the transshipment facility was one that would be only taken on by the private sector not by Government, that the £180 million investment would be a private sector initiative and that, in fact, Government at this stage have not got a bid as such and that they would be inviting tenders. At that stage, perhaps we will see whether there is in fact a viability because obviously the private sector will only go into it if there is an economically viable and feasible business to be got at. In respect of the other proposal that is referred to in the Port Study which I assume will not be taken on board, the introduction of berthing charges to bunkering services. I do not know whether the Minister intends to implement that recommendation of the Port Study. Our view is that the boom in the bunkering industry would be very seriously affected by the introduction of those charges because I understand that the margins are in fact very, very tight between Gibraltar's competitors, particularly the one just across the Bay and that any increased cost would result in a significant loss of business. We are also told, Mr Speaker, that the port will be run on a commercial basis. We do not know what that will mean in practice other than it will be called a more commercial port authority and that it will have a Chief Executive who will have with him a Captain of the Port. We will have to wait and see with time whether, in fact, those changes, restructuring will bring increased activity. We certainly hope so, Mr Speaker, but we are not that hopeful that indeed the changing of the port authority itself will by its own volition bring any added business.

Mr Speaker, in looking at all the contributions that have been made in this session, it seems that credit is taken at times; blame is made of the other side and it is true to say, indeed, of both sides of the House. When reading an article in the Chronicle recently on the same day of the Ecofin meeting on the 25th May which reproduced in part an article from the Sunday Business, I

read of the initiatives of the Government in terms of marketing and in terms of the tremendous changes that will be making to Gibraltar and one could have been forgiven for having thought and reading in the Gibraltar Chronicle that the Sunday business was referring to post-1996 initiatives. In fact, Mr Speaker, I was faxed by a friend in the United Kingdom the actual article itself and it was interesting to see that the only bits that referred to pre-1996 election had not been reproduced in the article. In fact, the one most glaring omission was the success of the strategy of the previous administration leading to the boom in banking, up from five banks in 1985 to 30 banks in 1990. For some inexplicable reason that very important piece of information was not available in the Gibraltar Chronicle review of that same piece of the Sunday Business.

Mr Speaker, the Minister in talking about confidence in the financial services sector said that that was at an all-time low in 1996 and since then this Government have been working hard just to keep the business that was here. It is also interesting that the Finance Centre Survey that was carried out last year put as the number one factor, dislodging the political aspects, the question of tax. Since this Government came in in 1996, no new banks have come in and, in fact, even worse so that two banks may actually be leaving. I do not know if that is to do with the confidence or that is to do with the tax. Thank you.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Friday 4th June 1999, at 9.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 8.25 pm on Wednesday 2nd June 1999.

FRIDAY 4TH JUNE, 1999

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 Miss M I Montegriffo
The Hon A J Isola
The Hon J J Gabay
The Hon J C Perez
The Hon Dr J J Garcia

IN ATTENDANCE:

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

**Debate continued on the Appropriation (1999-2000)
Ordinance 1999.**

HON K AZOPARDI:

Mr Speaker, I think I have to round up the departmental contributions to the budget session. I think the Shadow Spokeswoman will go after me and then the Chief Minister will reply, I think that is the sequence. I do so with pleasure.

My combined budget of my departments is about £35 million which is I think a quarter of the budget. It is a substantial amount of money. What I intend to do is start, as I do every year, this is the fourth budget that I present for Health and Environment and I intend to start as I do every year with the Health Department. I do not intend to go through very minor items of expenditure as has been my usual style but rather to give an overview, a broad panorama of the developments in particular fields.

Firstly, to deal with the structural issues and the review. Hon Members will have noted that very unfortunately this year we had the death of our Chief Executive, Gavin Jackson. That unfortunately meant that his death necessitated a restructure in the department. We had anticipated that, of course, we would have a restructure at some stage because his two-year contract would have been up this October but of course events took over and we had to anticipate those events and indeed to take forward a restructure on a far quicker basis. That has meant that the former General Manager is now Chief Executive and there has been an internal restructure to give more operational duties to the person who was the Deputy Director of Nursing Services who has taken a far larger operational role within the Authority as had been envisaged by Gavin Jackson when, in fact, he was the chief Executive. I think that combination works well. I think that it will work well for the Authority in the future and I have full confidence in the people who are now leading the structure of the Authority in those terms. I should say at this moment when I am dealing with the structure that this year the Director of Nursing and the

Consultant Psychiatrist retire after many, many years of service to Gibraltar and I would like personally to thank them for their long loyal years of service to successive Governments irrespective of political affiliations and I am very happy to have worked with them for the short relative time that I have worked with them given their very long careers in public service. I also take the opportunity of thanking the staff generally because, as I say, I have a joint staff of about 1,000 people if one counts the quasi Government's situation at Community Projects and the reality is that it is a sizeable amount of people, I try to see as many people who ask to see me and certainly the staff members in both departments are very conscientious and hardworking and I owe most of the work that I can bring forward to this House and indeed publicly to them and I am happy to say that and I am happy to publicly acknowledge their contribution in the work of the Government.

Mr Speaker, I said in January 1997, when I launched the review document that we would probably require a few years to implement those recommendations that we sought we would implement. We have up to now implemented about 50 per cent of the 1996 Review which was published in January 1997. We are in the process of preparing a strategic plan on the remainder of the implementation of those recommendations that Government will accept. Certainly my target would be by the end of this financial year, to add another 15 per cent or 20 per cent on to that 50 per cent so that we can finish our first term of office with a very sizeable element of the 1996 Review having been implemented and with just a final tier of implementation left over the next few months. Of course it is true, and I make the point, that this is not the be-all and end-all of reviews because the changing nature of health care is such that it is quite customary for health authorities to end one review implementation and start another and it may be that at the end of this process we will have to have another review of services because things will change, circumstances will change and pressures on the service will change such that will require another examination of the process and indeed another examination of the needs of the community. I do not think that is a bad thing, I think it is a changing world and in a changing evolution of health care it is probably a very necessary thing for

us to go to deal with things on that basis. I remember one of Gavin Jackson's statements to me was, "Don't think that at the end of the structural review that will be the end. I have spent 40 years in health care and we have gone through structural review after structural review. There are always changing things because individuals matter and when you change the individuals in post sometimes you have got to accommodate the changes in the structure", I think that is quite right.

What I am doing for the second half of the health part is to split matters into a review of issues that have gone on in 1998/99 and the new developments which impact on the budget in 1999/2000. First I intend to deal with 1998/99 and hon Members will have noted that the annual report which had ceased in 1982 was brought back last year when I published in June 1998 the Annual Report 1997/98. I think that is a good thing. It provides a lot of information to people in the community who would like to know about our services, who would like to know statistics, who would like to know how our services work, who would like to know the people behind those services. I think it is a very important aspect of informing the public. At the end of it there is an underlying thread through health care, I think, if it is going to be progressed in a beneficial way to the community, in a modern way and that is health education and health promotion and to educate and make the community more aware of health developments is indeed a very beneficial thing because it does impact on the level of treatment one then has to give if people are more aware of the things they should avoid and people are more aware of the things they should not do then, of course, at the end of it, after a long process they may require less treatment and so on. So it is important for us to have put in the annual report, I am very glad to have done that.

Mr Speaker, as promised last year, the complaints procedure was launched in January 1999. Comprehensive guidelines were launched by me this January. The Ombudsman is the last tier of review of the complaints procedure; we published a 20 page comprehensive guidelines in recognition of the fact that it was difficult for people to follow such a comprehensive procedure. We

also published what we considered an easy to use booklet summarising the procedure and it is a four page booklet that I am sure, Mr Speaker, you have seen and in the middle pages it summarises the four stages. The first informal stage of course is to see the staff Member; then one would see the Designate Hospital Manager or the Primary Care Services Manager; then depending on whether things have clinical or non-clinical elements, the complaint would be dealt with differently and the final tier of internal review is, of course, the Chief Executive. If people are dissatisfied with this procedure they can always go to the Ombudsman under the new legislation. It is important, I think, for an authority in a demanding emotional service to have access to a procedure which can be used by patients and service users alike because it is not unlikely that people will want to bring matters to the attention of administration for the purposes of review and for the purposes of improvement and I see this as a tool towards improvement and so that is the rationale behind the Government's backing of this move. We think it is important both to deal with the particular complaints that arise so that individual clients of the service are helped and also in a macro sense so that we highlight issues that need to be addressed within the service which can be improved for the benefit of the whole community.

Mr Speaker, this year, following the contract entered into between the Gibraltar Health Authority and St John Ambulance, the St John Ambulance have taken over the emergency ambulance service in February this year. I think there are two benefits to that. Firstly, we have moved towards an efficient highly trained quality service. The members of St John have received rigorous training and they are highly professional and I think they are giving an excellent service to the people of Gibraltar. I only hear high praise of them. Secondly, it has allowed the police to free up some of their resources to be deployed to other tasks and I think again, I am sure the police are very thankful of that because it does provide them with that assistance. The Government had a manifesto commitment to recruit a consultant radiologist during the course of our term. I am happy to say that we did so on the 1st April this year and that the particular person was engaged at that

time; he had been selected previously during a selection process that had been on-going for the last six months. A radiologist is important as a back-up service and as a person who will assist in examination and diagnostic services to minimise, indeed, the requirement of the Authority to send patients elsewhere for that radio diagnostic services and it is important that a radiologist be recruited as an important and fundamental human resource for the Radiotherapy Department. This will greatly improve our diagnostic capacity and certainly the Government were very eager to do so on that basis and indeed on the basis that it was important that we fulfil the promises that we made to the electorate when we made them in 1996.

There have been notable improvements in the midwifery service in Gibraltar in the last year. We increased the complement and staffing of the midwifery to a total of 14 from nine. That has meant that the department is now able to have two midwives on night duty and this means that if one midwife is engaged in the labour ward another is free to attend possible admissions and assist other clients in the ward, it is less stressful because other midwives are on hand to provide a second opinion. It has meant the department can assist the health visitor more with ante-natal classes and it has meant that a domiciliary – and this is an important improvement – midwifery service is now being introduced which allows mothers a choice of early discharge from hospital and indeed I understand that moves are afoot, if they have already not been introduced, to allow people to do their first booking for maternity from their homes. I think it is a significant improvement to do that. We have enhanced our post-natal care by the process of early discharge. The point about early discharge is that because we are introducing the domiciliary midwifery service, it means that midwives will be able to visit newly born babies and mothers who have just given birth at home for a certain period of time and I think that is an improvement on the service available. I think it is important that people go home as soon as possible because they are happier at home and I think it is important that the Authority changes its focus and changes its resources to be able to accommodate the desire of people to go home earlier. Of course, it also means that by earlier discharge

we are able to shift the use of some of the empty beds in maternity, in the lower ward in particular which is usually fairly relaxed to other clinical requirements of the consultant in obstetrics and gynaecology and that, indeed, again is an important aspect because it will invariably allow a more rapid dealing with issues such as waiting lists in that particular specialisation.

Turning to nursing, I published the Nursing Review in August 1998. The House will recall that we had commissioned a Nursing Review made up of certain individuals who had put a report to Government on recommendations in relation to the field of nursing and that we were considering this at the time of the last budget and I said that there might be developments in the next few months and indeed there were. In August 1998 we published the Nursing Review together with Government's view of how we saw the future of nursing in Gibraltar. So we published a paper that dealt with four particular fields: it dealt with structural reforms and legislation; it dealt with working practices and working environment; it dealt with education and training; and it dealt with manning levels. On structural issues, we outlined the amendments and the benefits of the reforms of the Medical and Health Ordinance 1997 that dealt with re-registration, election of representatives, refresher courses and the possibility of registering and regulating the practice of nursing assistants. It also dealt with a new nine part register for nursing registration. In relation to working practices, we mentioned that the review includes several recommendations amongst which were the composition of recruitment and selection boards, internal rotation of staff between night and day duty, elderly care and rehabilitation services, the level of qualifications which persons in different nursing departments should have, protocols and professional practices which should be adopted by the Authority, nurse education and training and approaches to make a more effective use of nursing time and skills and we said that Government were preparing a programme of implementation of many of these and we have seen, in the last few months, when the Opposition Member has asked me questions how the Authority has been taking a view of certain recommendations. There are certain

others, as I have said in the House, are subject to other developments, that we have been progressing implementation of specific recommendations and indeed we have taken that macro view that I thought was important that we should take back in August 1998 when we launched this particular document. We mentioned also our view on education and training when we published the Nursing Review and we said we were taking three fundamental measures to deal with the essential implication of the Nursing Review which was that we had to change the skill mix within the Authority and we had to recruit more trained staff and less untrained staff. So we dealt with that in three ways. We stopped the automatic induction of Mount Alvernia nursing assistants into St Bernard's; we introduced entry requirements for applicant student nurses and enrolled nurse trainees and we re-opened, and I thought that was significant, the RGN training at the Nursing School and we took on the first batch of student nurses in June 1998. Indeed, that is an important part of the Government's initial education within the Authority. We have been very pleased within the Authority to see the high standard of applicant that has come forward that has shown and expressed an interest in the nursing profession. We have people who are highly qualified with a great number of O-levels, A-levels and indeed a couple with degrees who are now studying to become qualified nurses and we are very happy to have them within our complement of trainees and we look forward to recruiting further more qualified persons to join the skilled ranks of the Authority, not to say of course, that we may not require nursing assistants but when we do the recommendation of the review was that because there needed to be a fundamental skill mix change we had to target our resources to recruiting more trained nurses and because we wanted to localise those posts as much as possible, we thought that the best way of doing so was not to put an advert for 30 nurses in the UK but rather to encourage school leavers to join the ranks of the Authority and to do so by making the jobs more available to Gibraltarians and that is the way we are dealing with it. When we do require nursing assistants an advert will be placed for nursing assistants and we will recruit them, as necessary, but hon Members will note that the number of nursing assistants which is recommended by the review is, to a very large extent,

much less in a new recruitment sense than it is for qualified nurses. We also dealt with the issue of manning levels and overtime costs when we launched the nursing review document, hon Members will recall that I said at the time, in August 1998, that when we were elected into Government actual manning levels stood at, and I know we have this regular difference of opinion as to what it means but for me it is important to have the nurses on the wards physically and it is no good for me to have a paper complement when there are not people in post. Papers do not deal with patients, it is real nurses who deal with patients and in the sense of physical bodies, when we were elected we had 35 Sister Charge Nurses; 83 Registered General Nurses; 10 Senior Enrolled Nurses; 63 Enrolled Nurses; and 94 Nursing Auxiliaries or Assistants. We committed ourselves to have a real complement of 331 which is an increase of about 50 and to have 38 Sister Charge Nurses, in other words, an increase of three; 105 Registered General Nurses, an increase of 22; 89 Enrolled Nurses which is another increase of about 20; 99 Nursing Assistants. That has meant that there will be a real increase because we said that we would phase those posts in by 2002; there will be a phased real increase of an addition of about 40 to 45 trained nurses on the wards physically and not just on paper and I think it is an important distinction to make notwithstanding our perhaps different interpretations of how we have reached those figures. But I think that the emphasis that I put is that these are going to be real bodies on the ground not just numbers on paper. I emphasised that we wanted to localise those posts by making those available to Gibraltarians and the way that we have done so, as I said before, was to try to recruit these through a longer process, that is why we wanted to phase them in by 2002, to be able to accommodate the fact that people will have to undertake two and three year courses through the Nursing School. We thought that this programme of measures represented a significant boost in Government's attempt to revitalise and strengthen the nursing profession and indeed provide a better training opportunity or more trained complements of trained staff, representation of nurses on the registration board and would modify and modernise nursing practices. So we were very happy to launch the review on that basis.

Mr Speaker, hon Members will recall that I said last year that the expenditure of the pharmaceutical side of our budget had risen to £5.1 million last year. In fact, it had risen from £1.6 million in 1989/90 to £5.1 million in 1997/98; an increase of about £3.5 million to £4 million over seven or eight years, an increase of about 10 per cent to 15 per cent on an annual basis. I said last year that we wanted to put in some rigorous controls as had been recommended by the Principal Auditor in the Price Waterhouse Report. He said that there was a lack of adequate control of the pharmaceutical scheme and a lack of prescribing controls for information and unnecessary use of proprietary substances and the dispensing of products not required for a cause of treatment in the presence of abuse of the current system. We wanted to do so in a way that did not affect patient care and we wanted to do so in a way that was fairly smooth and subtle even though it would be radical. Mr Speaker, hon Members will have noted that the forecast outturn this year is £4.3 million and the estimate for next year is £4 million. Had we taken into account the normal increase of 10 per cent plus the normal increase of the cost of pharmaceutical goods which is about five per cent to six per cent on an annual basis, this year's expenditure would probably be around £6 million and next year's will be about £6.5 million or £7 million. The fact that we are able to project £4 million for next year means that there has been a real decrease in this side of the expenditure of £1.5 million which is a significant amount of money which has been saved by the controls that we have put into place. Mr Speaker, I remind hon Members of the controls. They were: new prescription forms which are now numbered and have a cheque book analogy to it, each doctor has a serial number and every single prescription form is numbered. We had a big problem before about prescriptions being lost because they were unnumbered and no doctor's name was on the prescription form so things apparently used to get lost. There is now a pricing system. I think one of the big defects before was that we used to receive all these batches of prescription forms, priced by a pharmacist, we would do random checking but we would not actually price every single prescription, we would get 250,000 prescription forms every year and, of course, if one does not actually check that was leading to great discrepancies between

sums that needed to be available not because people were trying to put a different sum or anything but because there are mistakes made and they may not be aware of up-to-date prices and so on and that, I think, has delivered a real saving for us to actually enforce pricing. We introduced generic prescribing which has not affected patient care because all it means is the substitution of the same drug for a different basic drug. In other words, paracetamol for panadol, it is the same thing but one costs more money than the other just because it has a trade name but it has the same ingredients and so we have substituted that and that has delivered real savings and we have had a few complaints, I do not want to mislead the House but when we have seen that the complaints are justly founded because it may not have been the right thing then we have included that as a possible drug for prescribing and that has been the case in a couple of items and no more and I think we have delivered a real saving for the Authority on that basis. And why is a real saving important? Well, because we gave a commitment when we launched these controls back in July last year that we would re-invest savings and we have done that. The House will see that notwithstanding the fact that we have spent £1 million less on pharmaceutical goods, the budget of the Authority is still more this year and still more last year, we are still over the expenditure projected for last year. The reason is that we have re-invested that in recruiting people and in bolstering up other services and that can be seen throughout the Authority. I am not going to go into the details of that but the bottom line figure is higher than last year, it is because we have re-invested savings and that is the policy of the Government. Not to cut costs but rather to re-invest elements of money so that we can improve the service.

Mr Speaker, I mentioned that we place great emphasis on health education and the Annual Report that will be published again this year will highlight health education matters that have been brought to the fore over the last year. I do not want to go into detail with them because I am aware that we need to progress this budget debate as soon as possible. But may I just say that there has been excellent work by the Health Education Officer and the Director of Public Health in relation to the annual public

reports and indeed to the public health programme. We are very keen for there to be rigorous health education and health promotion throughout the Authority and throughout the community and I would ask anyone who is interested in those fields to certainly pick up a copy of the Annual Report once it is published later on. We are also trying to bolster up a website that we are about to launch on health education. The content at the moment is quite basic but we intend to bolster it up with added information and we think that that will be a useful resource for people as well given the new technological age. Mr Speaker, I make the point as well that I do not want to go into specific improvements, there are many to mention within each department. I have tried to pick on some but not all, it is not an exhaustive list and I would certainly refer anyone who is interested in seeing how the Authority works, to refer themselves to the Annual Public Health Report which I intend to publish again in the next month or so.

Mr Speaker, I pass on to new developments in 1999/2000. There are three important projects of refurbishment, relocation and new working environments that we are going to launch in the next few months. In the first place, we hope to officially open the new Health Centre very shortly indeed. We have opened a Rehabilitation Centre at St Bernard's Hospital. The Rehabilitation Centre has much better facilities for those requiring gymnasium, ultra violet treatment rooms, for those requiring general therapy counselling and treatment of rehabilitation type. We have been very happy to do so. There were not rehabilitation services and facilities at St Bernard's Hospital and yet it is an area that needed to be addressed very quickly because we have seen that after people suffer an accident or suffer a stroke the thing that they need most, the thing that they need most vigorously is rehabilitation and unless we were able to provide that then the patient themselves would fall behind in their treatment and progress and it is important for us to make people progress on two bases. Firstly, because of course the patient needs to recover as much as possible from the particular accident or illness and, secondly, of course because that allows us to have a more efficient and speedier through put of patients through the Authority. There is a new medical outpatient wing at St Bernard's

Hospital which again will improve services for the medical directorate substantially. The endoscopy unit and so on will be relocated to the top floor of the John Mackintosh Wing at St Bernard's Hospital and this will allow also a shift of space into other fields and other projects in the next year or so which will create space at St Bernard's as well and which will allow refurbishment and improvement of services and facilities available to consultants, staff members and patients alike. I should also mention that at last we have been able to deal with, in connection with these developments, the vexed problem of the records department and give them better premises. The hon Member will recall how difficult, I am sure, she will know how difficult the environment of the records department used to be and that has now been improved or is in the process of improvement. I believe they have already had their premises extended and that again is a very useful development, there were very cramped facilities for records and I think that those projects, major refurbishment projects will kick up alternative space and alternative space use which will significantly improve the facilities of the Authority. I should say also that apart from those major projects we intend to spend about £300,000 this year on other minor works which need to be put into place.

Mr Speaker, there is one public health project that was launched with my support this year, just a month or so ago that I wanted to highlight because it is an important public project for the whole community and that is the establishment of a cancer registry. The House will be aware that many people hold the view in Gibraltar that more cancer occurs in Gibraltar than should be the case. Indeed, even though there is speculation on that basis, there has been no medical evidence held by the Government in its official capacity that could sell that either way. Researchers in Spain though have shown that Western Andalucia has the highest cancer death rates amongst Spanish regions but that in itself is not an indication of the fact that things should be worse here because the discrepancy in cancer rates between Andalucia and other regions is slight though real. In other words, they are worse rates but they are not so significantly bad for it to invariably mean that there are more cause of cancer in Andalucia. The other

aspect which makes us nervous about the Spanish statistics is that they only record deaths and not rates and so, for example, there are experts in the field who hold the view that because the Navarran Health Service or the Catalan Health Service is better than the Andalucian one, it might be that they are dealing with patients better and they are not dying but it does not mean that they do not have as many cases. People will hold that view. I am not sure to what extent that view is correct. The point is that we just were not sure to what extent those concerns or those views were based on any statistical real evidence. Indeed, there is I know a lot of concern in Gibraltar about the potentially toxic industries such as the refinery and Acerinox, that may be polluting the environment and certainly the prevalence of tobacco smoking in Gibraltar unfortunately is very high and that I think also is affecting the matter. There were no systems in the hospital, no official Government backed system that systematically recorded that essential information. Mr Speaker, from June 1999 we have established Gibraltar's first ever cancer registry which is a service that will track down, record and monitor every case of cancer diagnosed in Gibraltar. It will be a rich source of information for all health care professionals and periodically report its findings. The cancer registry which will be based in St Bernard's will be supervised by the Director of Public Health. This initiative, Mr Speaker, is an important one but, of course, it is not alone corrective action is necessary to reduce the incidence and burden of cancer that will allow us to better advise the community on what they should do once we are able to, after a number of years, establish patterns if patterns do exist. It will certainly enable us to do that and I stress that this cancer registry that we are setting up is a purely confidential recording establishment, that there will be no breach of confidentiality, that these are anonymous records that are going to be kept and that it is just to establish guidance and knowledge for the purpose of statistical record, for the purpose of advice that we can then give to the community. It is quite common now for modern western communities to have international cancer registries, there is a network of international registries, we would hope after a number of years to be able to join those registries. There are quite a number in the UK, quite a number in Spain but one cannot obtain that information unless

one is within the international body of registries, there is one in Malta, for example. So we think that this is a good available valuable resource for this community. It would be ideal, of course, if we were able to, on a regular basis, obtain public health information from Spain and environmental information from Spain for us to be able to guide this small community of ours because sometimes it is better to have statistics that affect half a million people rather than 30,000 but, of course, there is natural reticence in Spain to access information. It is an unfortunate but real matter and so it has led the Government to be able to address this public speculation and concern to be able to answer it on a more definite basis to establish this registry which we think is an important project for the whole community.

Mr Speaker, the Government are keen and I am personally very keen to establish pilot telemedicine projects in Gibraltar. For those hon Members of the House who may not be aware of what that means, essentially these are diagnostic services which are available to patients without leaving one's home town. In other words, one might be in front of a screen in Gibraltar, seeing one's doctor on the other side, him seeing one's slides, one's x-rays and other health information and being able to diagnose without leaving Gibraltar. It is an important project. They are already using it in the United Kingdom and other territories to link remote places which do not have access to this kind of health care but may require it. We are going to launch pilot projects in dentistry this year and I hope that if the imaging quality is good and the consultants and the specialists are happy with it, that we will extend this to other specialisations so that we can indeed extend telemedicine era into Gibraltar and introduce it because I think that will be an important resource for this community because of our physical isolation it is important for us to have greater access to other facilities.

Mr Speaker, this year the Authority is going to purchase a new ultrasound machine which will cost in the region of £100,000. I make that point purely because it is the most significant expenditure on new equipment but not because it is the only expenditure. Apart from the purchase of the ultrasound we are

going to spend about another £300,000 on new equipment this year.

Mr Speaker, the House will recall that I have given in successive years my comments generally on private practice. It continues to be Government policy to regulate private practice and it is our target to do so. We have now, within the Government, agreed a framework document for regulation and we are having, what I consider to be, final discussions with consultants and I would hope that there should be progress in this field soon.

Mr Speaker, there is also a Governmental commitment to launch a Health Charter and we intend to do so by the end of this financial year. I said last year that the discussions were held up because in the UK they were reviewing the Patients' Charter and as we had drawn largely from the Patients' Charter I did not want to launch a document that was then going to be so criticised in the UK and so reviewed in the UK that we might have to go back to square one immediately. So I waited for the report, the Gregg Dyke Report that came out in December 1998. I did not know at the time when I read the Gregg Dyke Report that Gregg Dyke himself was going to be so notorious in a party political sense, I now read in the papers that he has given contributions to the Blair campaign and all sorts of things like that. I was not aware that he was the same gentleman who wrote the Review of the Patients' Charter and so on. In any event, we did wait for that and we have taken into account the recommendations of that report. I have formed a working group that is now looking at the draft of the Gibraltar's Health Charter to be able to make a more tailor-made charter for Gibraltar and I would hope that there should be progress in this field.

In December 1998 I launched another important educational project for the Authority which was the School of Health Studies. The School of Health Studies is a new educational project for the Authority. It is part of the Authority's long-term educational strategy and it is part of the Authority's long-term efforts to implement the Nursing Review in an educational sense. The Nursing School is now no more in the sense that it is now a one of

three components of what we see as the School of Health Studies. The School of Health Studies will include the Nursing School; it will include a segment that we call "post-basic professional courses" and it will include another segment which is the multi-disciplinary and health care management courses. The School of Health Studies which I launched in December 1998 meant that the Nursing School was relocated to Bleak House even though they keep a base in St Bernard's; they provide most of the academic training from Bleak House and they provide the practical training from the wards themselves. The School of Health Studies will seek validation of its courses by Sheffield University. That is a very important aspect of the School of Health Studies project. The reason for that is that there are proposals, as I said last year, from the European Commission level to make nurse training a university qualification and I think we need to be prepared for that by linking the qualifications we give in Gibraltar to a university qualification and so what will be achieved at the end of this is that our School of Health Studies will be able to continue nurse training in Gibraltar because the Gibraltar qualification will also be a Sheffield qualification. That is if we obtain validation, that will allow us to continue training in Gibraltar and will circumvent any proposals which are successful at European Commission level to make this a university grant qualification. So it is certainly very important for us to continue training of Gibraltarians here in Gibraltar for us to be able to modify our educational requirements and resources in this way. We are also going to provide new health care management training which was never provided before and, again, is a very crucial aspect of this project. The clerical and admin grades just were not receiving any support and assistance and even though there were funds for training, these usually were from the professionals in the service and there was a lack of regard of the fact that the administrators were professional administrators themselves and needed to be so and needed to be backed and the health care management courses will indeed provide that opportunity and I intend to provide resources for health care management in the next 12 months or so.

Mr Speaker, I pass on to environment. I have spoken about Public Health Departments, public health is what I consider the bridge between environment and health and I have spoken about public health developments and these are contained in the Health Authority's Report and I would refer people to that if they would like to see the developments that there have been in public health in the last year or so. I just want to quickly deal with other items so that we can round up my contribution.

Mr Speaker, the more significant areas that I would like to deal with are these. In the first place, planning. The House will recall that we launched a consultative paper during late autumn last year in relation to the planning of legislation. We are now putting the finishing touches to that legislation; there were a great number of contributions and a great number of large interest from the community in relation to the legislation itself. I would hope that we will be able to present the new Town Planning legislation just after the summer. I think that is probably realistic now, I would have wanted to do so earlier but I think we are looking at after summer. This new legislation will provide new structures and will introduce the element of public participation that we promised in our election manifesto we would introduce into the planning process and so it is a radical and yet important piece of legislation. I realise that it has taken long to come forward but that is because we wanted to get it right. There was extensive drafting and we thought it important for there to be, in the context of the fact that this is a public participation piece of legislation, we thought that it would be important for there to be public consultation on the legislation itself before we presented it in the House and we have done that for about six months and there has been indeed a fruitful process because we have amended substantially and refocused some of the sections in accordance with matters that have been pointed out by experts and people who work within the landlord and tenant and planning fields.

Mr Speaker, it will be recalled that the Government are reviewing heritage legislation and again that legislation has advanced, not as much as the planning legislation. We are looking at the powers of the Trust and the power to set up Commissions and a more

vigorous list of building protection. That is important to us in the context of the final thing I will say this morning, it is important for us to strengthen our legislation in relation to conservation and we intend to do that and I would certainly hope that in the next few months we are able to achieve a final version that can then be presented to this House as soon as possible thereafter.

There continue to be difficulties on some environmental problems such as litter and I would emphasise members of the community listening the importance of public co-operation in the litter enforcement effort and in the litter control effort. Someone is placing these bags at random places, presumably they are members of our community and I would ask them not to make the authorities' task worse and not to make Gibraltar an untidy place because we are all trying to consolidate our economy with a big shift towards tourism and I make my annual plea with responsibility in this field that it will be more difficult for us to consolidate our efforts and to create jobs and to encourage tourism and indeed to create a better quality of life in Gibraltar if we are so indiscriminate with littering Gibraltar and I ask everyone to be conscious of that need to be a bit more constrained in their customary practices and I hope that people are more aware of our immediate environment and do not litter Gibraltar.

Mr Speaker, the Government continue our beautification effort of Gibraltar. We are nearing completion of the Irish Town project and as I announced during the last Question and Answer session we are going to start the Irish Town north project quite soon, Irish Town north is the part north of Parliament Lane, that will be started quite soon once the materials arrive. The Government are also considering a project to level the Piazza and we would hope to do so as soon as we can reach agreement on other ancillary issues in relation to the Piazza. Our hope is to level and beautify the Piazza into the square that it used to be before the 1960's.

Mr Speaker, hon Members will have noted that the cleaning arrangements in Gibraltar have now been reviewed and a tender was advertised which closed in April. We expect that arrangements will be in place soon which will lead to a more

comprehensive service, it will lead to more frequency, to cleaning of additional areas and greater accountability of one contractor to the Government instead of a whole hotchpotch of five or six small contractors which has lead to a discrepancy and a broken up service which has been difficult to control, I am advised by the Cleansing Department.

Mr Speaker, in the field of oil pollution the Government have, as the House has been made aware, reached an agreement with Oil Spill Response Limited for them to provide a tier three backup service to Gibraltar. We also this year have reviewed the Gibmop plan which is Government's oil pollution plan to deal with tier one and tier two which are the more local and the more minor oil spills and there was a substantial exercise supported by my hon Colleague the Minister for the Port, Operation Seagull. There will be, finally, in relation to oil pollution, significant new legislation being brought to this House later this year. The 1992 Protocols on Civil Liability on Oil Pollution and International Oil Pollution Compensation should come to the House later this year. They replace the Order in Council that was made in 1976 or 1981, I cannot recall exactly the date, but they will replace those systems, they provide a more modern system of oil pollution and civil liability and I think it is important, given the amount of bunkering that there is in Gibraltar, the fact that we are the biggest bunkering port in the Mediterranean, for us to have support schemes in place to be able to deal with oil pollution and so on.

Mr Speaker, finally I wanted to deal with heritage as a significant part of my responsibilities. The Government are very aware of our heritage responsibility and indeed are very conscious that we should promote certain ventures and restore and conserve and undergo projects of that nature in Gibraltar. So we continue in that by continuing the Calpe Historical Series of Conferences which in 1999 will focus importantly on restoration and conservation of heritage assets. Again, in the context of what I will say at the end, I think that is important. The volumes of the Calpe '97 and '98 Conferences will, I expect, be published during 1999/2000 and a quaternary volume on early history in Gibraltar will also be published. The 1998 Gibraltar Conference acquired most of the

leading experts in the world, we expect and certainly the experts themselves in the field expect will become the leading text book and the leading new text book on Neanderthal studies and will provide a good impetus and a good promotion of Gibraltar. Indeed, it is so important a text book that the leading academic publisher Oxpox is going to publish this book and I think it does credit to the fact that we were able to collect all the experts and the fact that Gibraltar will be promoted in such a good light for that to be the case and in that context I mention that, of course, the Government will continue our funding assistance of the archaeological excavations at Gorams Cave and at Vanguard Cave because it is important for us to promote Gibraltar in a good light and this indeed collects the experts from the UK, the Natural History Museum who have worked so well with us, who have lent us the Neanderthal skull last year for our 150th anniversary; the skull that never left the UK was able to be brought back to Gibraltar under close security and we were very happy to undergo that joint project with our friends in the Natural History Museum. The Government also funded a Casemates excavation and we hope to at least expose some of the old galley house, it is the only galley house in the world now and so we intend to expose part of it in the context of the Casemates beautification. The Government are also assisting with a project to set up an aviary at Alameda Gardens and we have contributed some funds towards that. Also, I suppose close to me physically, is the fact that the Government are giving a substantial contribution towards funding the restoration and conservation of the City Hall Council Chamber and once we do the Council Chamber this year I would have wanted, once there is a relocation of the housing services when my hon Colleague, the Minister for Housing, consolidates his Ministry, I would want thereafter to do a restoration effort of the interior of the City Hall because it does leak and it is obviously an important building and it needs to be protected.

Mr Speaker, in that context, of course, I should also mention that we extended the tax concessions not only to Main Street and Irish Town, we extended it to the whole of the City Centre; every single property within the City walls now can access those tax concessions. They are going very well. In the last 18 months or so

we were able to beautify about 50 or 60 buildings, when I say we I mean the tax concessions were able to allow people to do that; 50 or 60 buildings have been beautified and I think it is important for us to continue encouraging that. The Government have particular urban renewal projects ourselves but the tax concessions will certainly encourage people to do so and to do so more vigorously and we think that will produce a more maintained, a more conserved and a more beautiful City Centre of Gibraltar in a way which will assist our eventual effort to achieve international and recognised status.

Finally, and against all that background of heritage of specific projects, Mr Speaker, I want to mention the Government's aim to achieve UNESCO World Heritage Status. Hon Members may be wondering how Government came to the conclusion of trying to seek that status. I briefed my hon Shadow Spokesman on the issue some time ago but for the benefit of other Members of the House I think perhaps I should give at least an inkling, perhaps not in such detail, of the way that matters progressed. The Government became aware of the fact that the new Labour administration were going to review the list that the British Government had submitted to UNESCO some years ago of places that might be eligible for application for World Heritage status back in 1997. We learnt on that and we learnt that Bermuda, the town of St George in Bermuda and other overseas territories, were very eager to participate and to seek World Heritage status. Once we evaluated what that meant and the prestige that comes with the World Heritage badge and the emblem for our tourist industry and for the conservation of our heritage generally, we reached the conclusion that it would be valuable for Gibraltar to try to obtain that status. There is a two-stage procedural process in relation to getting on the British list and then there is a two-stage macro process. Essentially it works like this: because we are an overseas territory normal applications in the United Kingdom get evaluated by the Secretary of State for Culture and Heritage. Because we were in the overseas territories, first our bid had to be endorsed by the Foreign Secretary and then it went to the Culture Secretary for evaluation. If we got on the British list, that did not mean that we would be

able to get UNESCO status but we are entitled to apply for UNESCO status in due course. UNESCO may refuse or may accept our application in due course but the importance of being on the British list was that unless we were on the British list now, the British Government were not going to review their list to UNESCO for 10 years and because an application is not normally made immediately once one has been placed on the list, because people will take from five to 10 years after being placed on the list to make an application, it was likely that if we missed the boat this time we would not be able to apply for World Heritage status for another 15 or 20 years and because of that, I am still young I suppose, I could see that, but there may be people in Gibraltar who the efforts to obtain World Heritage status is very dear to them, may not be able to be around for that effort. We thought that it was important that we should get cracking, get on the list and then be able to modify our strategies to be able to accommodate that effort and to be able to make an application within five to 10 years as is the normal standard. So the importance of this that had we missed the boat we would not be able to make this application for about 15 or 20 years. So my department and I was indeed heavily involved in this, we had long sessions with the Foreign and Commonwealth Office in relation to our bid for World Heritage status, there were other overseas territories that wanted to get the Foreign Secretary's endorsement, only four or three – I think it was – received the endorsement from the Foreign Secretary, we were one of those, that was in February/March 1998. We were then told the UNESCO tentative list committee set up by their culture secretary was going to evaluate our bid; we again submitted documentation to them. The tentative list committee, I am glad to say, supported Gibraltar's bid and made a recommendation to the Secretary of State in that context. He issued a consultative paper, in August 1998, which included 32 names on that list that the tentative list review committee thought could be available for World Heritage application but he made the point that that list was going to be whittled down further. I make the point that generally about 120 to 150 sites were considered; the tentative list review committee recommended only 32. When the Secretary of State about a couple of months ago launched the list that he intends to submit

to UNESCO it was further whittled down to 25 but there are only three territories outside mainland United Kingdom that had received the backing of the United Kingdom Government and that we are one of those three and so it is indeed a tribute to the efforts of those people who were involved in this, and I single out Clive Finlayson and Alex Almeda for that praise, that we have achieved this. It is important because of the fact that had we missed the boat, we would have not been able to apply for 15 or 20 years. Bermuda, I understand, are going to make an application this year. I am in contact with the Bermuda Government just to understand how they have structured their bid. The procedure for the decision itself is complex. We need to get advice on the procedure and I intend to seek expert advice on that, we already have an important English Heritage Policy Adviser arriving at the end of this month to have meetings, intensive sessions with us to be able to guide the Gibraltar Government in relation to the UNESCO bid. The procedure, as I say, is complex. It entails after tentative list inclusion and after nomination through the Member State, from nomination to determination it takes about 18 months. The World Heritage Centre which is a body based in Paris set up by UNESCO assesses that the nomination is complete, then they send out advisers depending on whether it is natural heritage or urban heritage, they send out advisers from the World Conservation Union, they make recommendations to the World Heritage Bureau which is a sub-committee of members of the World Heritage Committee. The World Heritage Committee is 21 Member States elected from members of the UNESCO, they elect a sub-committee to deal with the initial assessment of world heritage applications which is called the World Heritage Bureau which is seven of those 21. Once the World Heritage Bureau has looked at it, it makes a recommendation to the World Heritage Committee. It is a complex procedure, as I say, it takes about 18 months and I think we will have to obtain advice on the procedure and indeed on how determinations are made. But let me say that I have already tailored that into the Government's strategy to deal with heritage matters. We are going to make public the basis of that strategy in the next few months when I launch a Heritage Charter of key principles which the Government are going to commit

ourselves to. I do not want to pre-empt what is going to be in that but let me just say that it is a long-term six year strategy for us to be able to deal with legislation, deal with our heritage assets and deal generally and accommodate the wish and the desire, I think, of all people to make an application for UNESCO World Heritage status so that we are in a position by 2004/2005, where we can say, "We are quite confident that we can make an application now because we have done enough work over the last six years to be able to strengthen our resources, our assets, our legislation and conserve our heritage assets to be able to make this bid for international recognition". This bid is important to Gibraltar because it is prestige for Gibraltar, very good publicity for Gibraltar; it is a significant boost to tourism if we achieve it because we can say we are a World Heritage site. There are many people in places in the world, especially in places in the world that have less heritage, that have been populated in the last couple of hundred years that come to Europe to see heritage and it is a valuable tool for us to be able to say we are a world heritage site. We may be unsuccessful, we may be successful. I am not sure whether we will be successful or unsuccessful but the point is that we need to try to obtain and secure the status and we need to strengthen our resources and deal with our heritage assets to be able to deal with this in the best way possible. I think we have to look to the future with optimism. I think it will also give a boost, not only to tourism but to job creation in that field, once we are able to strengthen the heritage focus of the Government and I would have hoped sincerely, Mr Speaker, that though I was not able to brief Opposition Members in detail while the negotiations were being carried on, I did try to speak to the hon Member and was successful before the announcement was made public to tell him of the matter. I did tell him of the details of the negotiation once the matter had been announced and I would have hoped sincerely and I trust that I will have cross party support in relation to this effort to obtain international recognition and World Heritage status. I think it is important to Gibraltar, a very important heritage development and touristic development if we are able to achieve it within the timescale that we envisage and I end on that note, Mr Speaker. Thank you very much.

HON MISS M I MONTEGRIFFO:

Mr Speaker, as in previous years, the Opposition Members make their contributions generally related to the Ministries we shadow. We make an analysis of Government's performance during the year, and collate the information we have been given during Questions and Answers sessions, even though I must say, that sometimes we have been getting conflicting information, especially related to the figures we have sought.

I will start with the Health Authority. As always, I will try to be as constructive and as factual as possible, that is always my wish. I have taken note of what the Minister has had to say about our health services. In spite of everything he has said, however, there are still quite a number of issues on which we have grave concerns. We have also seen how the Government have implemented policy decisions which we believe are placing an unfair financial burden on the users of the services. I cannot resist the temptation to tell the Minister that I wish I would have found the state of our health services as he found them when he came into office in 1996, and not in the appalling state that I found them in 1988, when there was even a lack of basic medical equipment and an insufficient budget. I could go on and on and on, Mr Speaker, happily, for him, we left them in a pretty healthy state.

I want to take issue with the Government on the revenue-raising measures they have implemented, measures which were left out of the Minister's budgetary contribution of last year and which a few months after, were announced.

Firstly, the increase in prescription charges from £1.20 per item to £2.50 per item, an increase of just over 100 per cent. We condemned these increases at the time, because we thought that the people who were being directly taxed were the patients, the elderly and the chronically sick. As if this was not enough, then came the announcement of another increase - doctor's house-calls, these have been increased from £5 to £10, again another 100 per cent increase. We told the Government at the time that if they saw merit in doctors collecting more money for house-calls,

the Health Authority should have paid for this increase and the Government in turn could well have reimbursed them. Government finances could have absorbed this expenditure. These are therefore moves that are totally inexplicable to us. On the one hand Government announce every year that tax allowances are going up and on the other, they tax the people who need to be helped the most. Indeed, Mr Speaker, the Chief Minister, in this budget, has stated that it is only fair that because the Government have a surplus, some of that money should go back to the tax-payer. I regret that he has not been as lenient with the users of our health services, and since they do not need the money, we cannot understand why they have found the need to penalise the sick. I know that he has said in this House that he is not prepared to stand on the roof top of St Bernard's Hospital, throwing pound notes away, but certainly it could equally be said that he is now standing on the roof top of No. 6 Convent Place, throwing pound notes to as wide a sector of our community as possible. But the damage, to the sick, the elderly and the chronically sick has been made.

We have also raised in this House the question of the implementation of the two reviews that they initiated, the Medical and the Nursing Reviews. To date on the medical one, the Government have refused to answer questions on those recommendations that they will not be implementing. The Minister has only gone to the extent of referring to percentages which has meant nothing to us.

On the question of the Chief Executive post that the Minister made reference to this morning, we have always expressed serious doubts in the wisdom of having to bring an expert over from the UK. It was tried just prior to 1988, when we came into office, when the Health Authority was being set up as being a completely independent body from the Civil Service and civil servants would need to acquire some skills in terms of new methods of administering the change. The experience then showed that our people were fully capable of running the service. In fact, our health services were well managed even by the people who were there before we were elected. The only

difference from 1988 onwards was that we gave them more money. Notwithstanding that we told the Government what had been our experience, they still chose to bring another expert. We therefore do not agree with the Minister that the changes he proposed to make, which in essence are mainly the creation of new administrative posts, required another expert. There has been no major revolution and today the services are still being run by the same people. And because the Government decided that the salary for a Chief Executive should be set at £56,000, they have created a problem with the pay structure within the civil service senior grades. That is the reason why they are now having difficulty in negotiating the pay for the new Chief Executive. Mr Speaker, he is not only a Gibraltarian but he also happens to be the very same person who was at the head of the Health Service when we were in office. One thing we are glad of and that is that they are not making the same mistake as before of recruiting yet another expert from outside.

I agree that the role of the Opposition is to make constructive comments, but any comments we make are considered to be destructive, not because of the merits but because it is us putting the arguments. I wish that the GSD, when in Opposition, would have been as constructive as we are in Opposition.

With the nursing review it took the Government two years once they had it, just to decide whether they were going to make it public. We now realise why they took such a long time in making this decision. I would like to give a rundown of events that have transpired in this House in relation to the nursing review. We have asked questions on each individual recommendation, these are essentially related to the increases and the complement of nursing grades. The Government proposals show that they will not be implementing the Report because the Report recommends two things: the changes in the number of posts in different grades and increases in the total number of posts in the complement. The Government appear to have decided that they will accept the changes in the composition within the existing complement without increasing it. This is fundamentally in conflict with the logic of the Report, because for example, in a particular ward one may

need more senior staff in addition to the junior staff. What the Government are saying is that they accept the recommendation of more senior staff in a particular ward but in substitution of the junior staff so that the total number of persons allocated to that ward does not change. That is a completely different scenario from the conclusions of the nursing review. Having commissioned and studied it for a very long time, they have come to the conclusion which has nothing to do with the rationale of the recommendations. What we want to know is very simple. What are they implementing in relation to what there was there before? The previous review was conducted by the Director of Nursing at the time when we were in office. And indeed there was a recommendation that there should be different manning levels with different grades in the different wards. There was no political decision to change that recommendation, those recommendations were adhered to. Of course, at any given point in time there are vacancies like in every other Government Department. For example, if we have heard from the Government that there is an over-complement of AAs and an under-complement of AOs, the explanation was that the people had entered at the bottom of the ladder and they were on the way up. But the structure is not reflected by the people who happen to be in post in any particular day. If today we are told, for example, that there are 70 AAs when there are supposed to be 25 and tomorrow one gets promoted to AO, the structure of the civil service does not alter because what we have are AAs occupying AO posts. It is the posts that define the structure of the civil service. The same principles, Mr Speaker, apply to the administrative posts of the Health Authority and there is absolutely no reason why the same principles should not apply to the nursing grades. The correct structure is therefore presently being determined not with what is considered to be the appropriate manning levels for a particular ward, but by what happens to be the grading and the number of people in employment at any particular time. By that definition, the nursing grades are in a state of permanent restructuring, every time someone leaves or joins the service the Minister considers there are new complements, he describes the complement by referring to the number of people in employment ignoring the vacancies which means that every time a vacancy is filled he can say there

has been an increase in the number of nurses. In order therefore to judge the desirability of the new nursing structure that is being put in place, we cannot do this by reference to the recommendations of the Nursing Review, we can only do it by trying to find out who happens to be working where and at what grade because there is no other way to establish what the composition is. This is the analysis we have arrived at by virtue of the answers we have received to all our questions in this House and it appears, therefore, that this new situation only exists in the Health Authority. The norm has always been in the Health Authority and indeed in the civil service, that there is an agreed complement. With, for example, the Rocca Report, we had a situation where we had 315 people in post compared to the established complement of 340 and the provision under personal emoluments was for the established complement. Whether the figure was adjusted or not during the course of the financial year depended on the balance between the people leaving or entering the service, like what happens in every other area of the Government. In successive budgets, Mr Speaker, I have been trying to establish the comparable scenario as regards the provision in the personal emoluments of the Health Authority. We have been given conflicting answers, being told first that it included the money for vacancies and then that it did not, that it only included the number of people in post. We have also asked questions in this House because we can only compare the establishment with the jobs filled so as to know at any point in time what the structure is and how many vacancies there are. If the Minister wants to refer to physical bodies he should stop making reference to the established complement in this House which surely confuses the matter even further.

Two weeks ago I wrote to the Minister asking him to provide me with the information in relation to the figures contained in last year's budget and in this year's budget but I have not yet received that information. I sincerely hope that the Minister will be providing it to me by the Committee Stage or as soon as possible because this will give us a clearer picture.

Today we have heard that there will be another review. We do not agree that in order to keep up with advances in medicine one needs to have a review every few years. There are advances in medicine all of the time and we have had the experience that the more reports we have from the Minister the more confusing the issue of the nursing structure becomes. At this point in time I would also like to thank Mr Rocca and Dr Cecil Montegriffo who are retiring. They also gave me invaluable help when I was Minister and I can only say they have always been a credit to our health services and they will be missed.

On another issue, Mr Speaker, I would like to come now to the complaints procedure. If the Government's new procedure will adequately deal with patients' grievances is something that we will need also to evaluate because it has recently been implemented. But having seen it, it appears to be a long drawn exercise where patients first have to see the Staff Member concerned, then the Manager. Stage 3 if it is a clinical complaint one sees the Clinical Supervisor in charge of one's case; the Public Health Director may decide that there should be an independent clinical review; if it is non-clinical the complaint is then referred to the Chief Executive. Stage 4, the Chief Executive decides whether he should recommend to the Health Authority that an investigation or inquiry takes place. If one is still unhappy one is then told to do to the Ombudsman, quite a journey. The Minister had promised an easy to use complaints procedure, we will need some time to judge its effectiveness.

And now to the budget, Mr Speaker. The Minister once again has said in his contribution with regards to the budget that he is spending more money. The Minister should realise that when one makes an analysis of all the Heads there are new elements when one takes into consideration, for example, the capital spent; the rent of the Health Centre and all the other various sub-heads. Therefore if one takes all that out of the equation he is not spending, again, as much money as he is claiming. I think we would also like to know why there is an increase of £1 million on the revenue side of the GPMS, that is from £16 million to £17 million, we have not been given an explanation on that.

As to refurbishment works, I am sorry to note that the Minister has still not taken up my suggestion to build extra floors at St Bernard's Hospital that would have ended up providing the Health Authority with a second theatre and other valuable space for extra wards. As I said last year, there were plans drawn up by the MOD when they were negotiating with us the use of the hospital by their personnel. These plans were indeed accepted by the medical and nursing staff who were invited to have an input. Therefore I would urge the Minister to have a look at those plans because they would really alleviate space problem at St Bernard's Hospital and we would end up having other wards and an extra theatre.

As regards the other works, Mr Speaker, it has indeed taken the Minister a very long time, first of all, to come to the decision that the old kitchen should be converted into a rehabilitation centre and then for the whole of the works to be completed. Especially, Mr Speaker, when one compares that we started the works at the old kitchen area a year before we left office, that was in 1995.

Finally, Mr Speaker, on our health services, I can only repeat by what I started off by saying and that is that in a scenario where Government are giving subsidies, increasing tax allowances and other benefits and spending more sums of money in less important areas, they should have decided to do the opposite in an essential area such as are our health services. They have targeted the sick but on the other hand they have helped so many other people, that is regrettable.

On sport, again here we left solid foundations for the Minister to inherit. We opened up areas that had been closed prior to when we were in office, we provided sporting facilities for different associations, that culminated in the success of the Island Games, we provided a large number of premises which the Minister has then had the privilege to hand over, so on and so forth. I agree with the Minister that hockey is a success story and I also congratulated and today will again congratulate the achievement of the Eagles Hockey Club and also all the other sports people who have done us proud.

I am very pleased to hear the Minister for Sport announcing the development of a new sports and leisure complex in the area of Bayside. I give credit where credit is due, in the same manner as my Hon Friend, Mr Peter Montegriffo, did in relation to our initiative on the reclamation and infrastructural works. We may have our differences but I am glad that he has given credit where credit is due and I have also given credit where it is due.

We must not forget that sport is not only important to improve our quality of life but it is our sports people who have and who no doubt will continue to carry the message that we have an identity of our own, one that we can all be proud of, and it just goes to prove that with determination, hard work and resolution we, little Gibraltar, can stand on our own two feet against bigger and stronger nations. We just need to have the confidence and the willpower that our sports people have shown against great adversity. Thank you, Mr Speaker.

MR SPEAKER:

I will call on the Chief Minister to reply, if he wants to reply.

HON CHIEF MINISTER:

Mr Speaker could be forgiven for doubting whether there is any need for me to reply but it is conventional that I do so and therefore I will.

Mr Speaker, even allowing for the obligation of an Opposition to criticise and to oppose, even allowing for that, in generous measure, the contributions of Opposition Members have really been quite extraordinary. We do not expect them to heap praise on the Government; we do not expect them certainly to vote for us and we do not expect them to miss any opportunity that is available to criticise but the general thrust of all of their addresses including the last one, all of them are based on a false analysis or a false representation of facts is that, firstly, the Government have no policies; secondly, if we do have policies they are not working;

and thirdly, to the extent that we do have policies and they are working which they do not think is happening on too many instances, that is because they when they were in office created the platform and all we are doing is continuing their success. Well, Mr Speaker, Opposition Members should relax a little, they can rest assured that general elections are not as imminent as they might fear. Opposition Members' attack on the Government appears to be based also on the fact that we are creating nothing of value and that the Government are spending money hand over fist. I hope I have not done the hon Members a disservice with that short summary of what has been the sum of their contributions in this House. Mr Speaker, it beggars belief really that the hon Members can say with a straight face that the Government have no economic policies and that the ones that we do have are not working. Let us review the situation.

The Hon Pepe Baldachino may wish to say that Jaime Netto's performance in the Ministry of Employment is shambolic. I do not know whether he thinks that people form their views on the basis of the adjectives that he chooses to use regardless of what they can see for themselves and what the statistics show but the reality of the position is that measured by the same method that they used, measured by the method that they invented and used and presented to the electorate as credible, unemployment has fallen by 35 per cent from 599 to 388 from January 1998 to March 1999. Well, I do not know whether the hon Gentleman thinks that that is shambolic but if that is his definition of shambolic, all that I can say is that I hope that there will be more shambles of that kind. If the hon Member when unemployment was 588 criticised the Government for presiding over high unemployment and then when we reduce it by 36 per cent he says that the performance is shambolic, I think the hon Member should not be surprised that people do not take his judgements seriously. It is really trying to make black look white and trying to persuade people that the reality is different to what it is in fact. But, Mr Speaker, at the end of the day we all perform in front of an electorate that has the say every four years. One of the things that kept on slightly, I have to admit, amusing me as I heard Opposition Members explain just how everything was so rosy when they were in office and just how

little we have achieved, one of the thoughts that kept on crossing my mind is, goodness gracious me how on earth did the electorate of Gibraltar ever come to the conclusion that they no longer wanted the hon Members in office? Really the hon Members must be at a loss given the statements that they have made in this House, the hon Members must be at a loss to understand why the electorate has been quite so ungracious and ungenerous as to evict them from Government given the miracles over which they were presiding. I would suggest to the Opposition Members that they perhaps ought to reconsider their own judgement of what the situation was over which they were presiding.

Mr Speaker, hon Members may wish to rubbish Government's achievement in the field of training but again, the reality is that Gibraltar has never had more or better organised, planned, structured, monitored, delivered, valuable training ever in its history. Hon Members may wish to rubbish this, there are now more people in genuine training opportunities under genuine training schemes than there have ever been in Gibraltar, certainly that there was ever when the Opposition Members were in Government. Their definition of training was that they sent people on cheap labour rates to private sector employers to use as they pleased. Well, if that is their measure of training, if that is their definition of training, if that is what they think is a way a Government should act in order to equip youngsters to make their way in the world, by that definition I agree that we are doing terribly badly but if, like the Government, people believe that permanent low wage subsidy where no real training is delivered, where no valuable qualifications are obtained, that that does not constitute the sort of training that the Government should be investing the taxpayers' money in, then I think anyone who shares our vision of what is valuable training is bound to come to the conclusion that the hon Member is being much more than less than generous of the Government when he criticises our training initiatives, he is simply refusing to recognise the realities for what they are. Mr Speaker, it does not really matter what the hon Member says because at the end of the day people do not judge our respective political performances by what we each say,

people have got eyes and ears and people see things for themselves and people make judgements on the basis of their own assessment of what they see unfolding in front of their eyes. If the hon Member thinks that he can somehow make people believe that black is white and white is black simply because he says so, regardless of the evidence in fact, regardless of the reality unfolding in front of everybody's eyes, then I regret to say he is embarked on a political exercise which I suspect is unlikely to prosper. I wish to take this opportunity, Mr Speaker, to applaud the work and achievements of the Director of Education and Training; the newly appointed Training Officer and his staff; the trainees that the Opposition Member has done so much to try to discourage during this debate and, indeed, the Minister for Training who have, in a relatively short period of time, transformed the landscape in Gibraltar in relation to training initiatives.

Continuing my little review on the alleged lack of Government policy, I speak in relation to the finance centre not just politically but also somebody who was an operator in the finance centre and who was living on a day-to-day basis the position in the finance centre and who understands the finance centre. The Opposition Members may wish to suggest obviously with more than a little bit of political partisan self-interest that the Government have no policy on the finance centre but, Mr Speaker, how many people in the finance centre that may be hearing that do they think actually believe him? Well, he ought to be careful because many of the people that I consult are very close to him and this is not the message that I get but we will come to that. The fact of the matter is that the finance centre is buoyant. I admit I am no longer in it and therefore I am less in touch with it than I was when I was a practitioner in it but I take every opportunity at receptions, at my quarterly economic advisory council meetings, at my not infrequent meetings of the finance centre council, in the Minister's not infrequent meetings with the finance centre council, we take the opportunity to take soundings as indeed we have done with this survey that my hon Colleague, the Minister for Trade and Industry, referred to in his speech and all the feedback that we are getting from the finance centre is that they are busy, some

sectors more than others. Some sectors feel more threatened for the future because of some of these measures on the horizon than others and the Government speak to them to try and deal with their separate sectorial concerns but on the whole the information reaching the Government is that the finance sector is from busy to buoyant. I agree that those are not scientific measurements but for the purposes of this debate, that is the summary of the assessment. I do not know if the hon Members think that this happens despite the fact that the Government do not have an economic policy in relation to the finance centre and that this also is due to the marvellous record of the Opposition Members prior to 1996 in the finance centre. Mr Speaker, is the hon Member quite so oblivious, is he the only person in Gibraltar oblivious, indeed, given that he is an active participant in the offshore finance centre sector, is he the only person in the offshore finance centre in Gibraltar oblivious to the fact that the finance centre which we inherited in May 1996 was peering over the edge of a steep precipice to which Opposition Members had carefully and systematically led it during their eight years in office. The hon Member is not aware about the clamorous loss of international and indeed local confidence in Gibraltar's financial services centre. Obviously they are not and it does not surprise me to see them shake their heads now because if they had been aware of it I cannot believe that they would have been so irresponsible as not to have taken action to remedy it and this proves the point that they are oblivious to the realities of the situation or does the hon Member think that he could build a finance centre in Gibraltar with editorials in the London Times entitled "Rot on the Rock"? It was that something that was going to help the hon Member had he won the last election build his finance centre, a finance centre based on a community dedicated to fast launch smuggling; on a finance centre based on a rebellious refusal to comply with EU obligations; crashing loss of international confidence; the international press almost to a newspaper berating Gibraltar's reputation, he may not wish to recognise this but this is the situation that the Government inherited in May 1996 and he must know that there are operations in Gibraltar that are still in Gibraltar because the Opposition Members did not win the last election. Mr Speaker, I hate to have

to keep on saying, I know the hon Members think that we have a tendency to rake up the past too frequently for their comfort but it would help us to accommodate the hon Members' desire that we should not remind Gibraltar of its recent past, it would help us please them in that respect if they did not provoke us by making the sort of statements that they themselves make which invite this sort of response.

Mr Speaker, frankly if we achieved nothing more by the time of the next election than what we have already achieved in the finance centre through a lot of very hard work, time, effort and money but if we achieve nothing else come the next election for the finance centre than to have repositioned Gibraltar's reputation, than to have restored international confidence in Gibraltar so that the operators in the finance centre have a field in which to play the game, if we have achieved nothing more than that come the next election, we would already have achieved much more than most operators in the finance centre would have wished or dreamed in May 1996. We take the view, with which we obviously do not expect the Opposition Member to agree, that during the last three years this Government have saved Gibraltar's financial services centre from almost inevitable oblivion.

Mr Speaker, it is as worrying to the Government as indeed I believe it is to every responsible reputable participant in the offshore finance centre, to hear that it is still the official Opposition that aspires to be Government; that it is still their policy that Gibraltar should rebel against the transposition of financial services directives and should refuse to do so. In the Government's judgement and in the judgement of the financial services centre, that would be catastrophic for jobs, for the financial services sector and for the economy of Gibraltar and it is not true, as the hon Member said, that there is, "A clamour from the sector" that we should not transpose financial services directives. It is not true even by application to the Bar Council whom the hon Member said still subscribe to a resolution that the Government should not do so. Each and every sector of the financial services industry including the Bar Council consulted not

just by the Minister but personally by me, has said that they support the Government's policy of complying with Gibraltar's EU obligations in the area of financial services as an essential precondition, as an essential requirement to any prospect of success. If the hon Member is still trying to persuade this community that he can build a prosperous successful financial services centre in which people can have security of employment, yes the very people who now have mortgages and who need security of employment, that those hundreds and hundreds of people that rely on the financial services sector for jobs directly and indirectly, the hon Member is still trying to persuade them that he can make a success of their industry and therefore security of their jobs on the basis of setting up Gibraltar as a rebellious territory of the European Community that does not comply with its EU obligations – yes, he can shake his head but, Mr Speaker, a rebellious territory that does not comply with its EU obligations is just a slightly more colourful way of saying what he was recommending to the Government which is that we should refuse to transpose directives. Therefore a failure to transpose directives, I will certainly give way to the hon Member.

HON A J ISOLA:

Mr Speaker, I was not in any way proposing a rebellion. What I was simply saying was exactly what the Bar Council said in that resolution. What that resolution said was that before continuing to transpose directives, we should clarify exactly what our position is in order that we do not find ourselves in the position where, after having transposed all the directives, we find that we cannot passport, that is what I have said. I have not promulgated a rebellion and if I have, I am in good company with the Bar Council which unanimously, incidentally, passed the resolution. If the President of the Bar Council has since spoken to the Chief Minister and discussed it in a different way, so be it, but the resolution still stands as far as I am aware.

HON CHIEF MINISTER:

The hon Member's position is not that he just wants the position clarified, he votes against all the directive transpositions that we bring to the House. Gibraltar's position in relation to financial services is perfectly clear, it does not need clarification. *[Interruption]* Well, since when is the yardstick for anything in Gibraltar what is or what is not acceptable to Spain? If what the hon Member is saying is that we should not transpose directives, that we should forego the opportunity of passporting, that we should heap on Gibraltar the international programme that would follow, the complete lack of marketability that would follow, the complete loss of international confidence that would follow from a wholesale failure on Gibraltar's part to transpose EU directives until Spain says, "Yes, I recognise the Financial Services Commission of Gibraltar and all Gibraltar licensed companies are welcome to do business in Spain", if that is what he wants to do, until that happens then what he must understand, he must know that that is never going to happen. Therefore, there is nothing unclear about Gibraltar's status within the European Union, there is nothing unclear about the right of Gibraltar licensed companies to passport into the European Financial Services market, it is true that there is one technical issue about how bits of paper physically reach other parts of Europe from Gibraltar, whether it should be directly from the Financial Services Commission or through London, that is being addressed but the reality of it is that there are companies passporting already into the European Single Market. We cannot benefit from the potential of passporting until we have complied. How can we test whether we are able to passport if we are in non-compliance? The hon Member must know that one has first got to comply and one has then got to test the assertion of one's right which has been done, Mr Speaker, six companies are passporting in insurance. He has only got to read the Financial Services Commission's Annual Report to get even the names of the companies. What do we say to those six companies that are passporting? "Hang on, no you cannot passport because we are not going to pass the laws to allow you to do so because Spain says that it does not often receive bits of paper from the Gibraltar Government". Mr Speaker,

the hon Member may think that that is a way in which the financial services sector can be established in this community but we are entirely persuaded that it is a misguided, misconceived and erroneous approach to this issue. The hon Member says we are no nearer, to quote him exactly, to achieving banking passporting now than we were two years ago. Well, I do not know if he wants to be held to those exact words but if he does he has to know that this is not true. In the last two years we have completed the legislative requirements for banking passporting; we have resourced and geared up the Financial Services Commission with their necessary regulatory capability assistance for banking passporting, before that it was really being done in respect of insurance and we have submitted to and passed the audit of the Treasury, the Bank of England and the Department of Trade and Industry of the United Kingdom that we do indeed now meet EU and higher UK standards in respect of banking passporting. Mr Speaker, the hon Member may wish to describe that as being no nearer than we were two years ago but he is being less than totally accurate and certainly less than totally fair. We are on the doorstep of banking passporting. Gibraltar has done everything that has been required of it, everything that it needs to do and that has been so certified. All we are waiting for now is the political announcement, just as one day in June 1997 we got a letter from a British Minister saying, "Well done chaps, here is your insurance badge", well all we want now is a similar letter saying, "Well done chaps, here is your banking badge". Mr Speaker, we were nowhere near that two years ago. Mr Speaker, the hon Member asked, when we started discussing the various threats and challenges and the issues there, it was more of a rhetorical question but he wanted to be reassured that the Government were in close consultation with the industry on these issues. I can assure the hon Gentleman that the Government are in consultation and will continue to be in consultation with the finance centre on the threats involved and indeed will consult the finance centre on the Government's proposed responses to these initiatives so that the Government and the sector, I would like to believe and as I think I detected from that part of the hon Member's contribution to this debate, that on this issue at least there is no political divide between us, that this is in effect a

common threat from abroad in which Gibraltar, both Government and Opposition and indeed the industry, have a common objective and hopefully we can agree on how we save them. But, of course, I would just like to mention to the hon Member that these are not threats and challenges facing exclusively Gibraltar, that those that are based in the EU also are faced by the EU finance centres – Luxembourg, Dublin as well as Gibraltar – but that even the EU measures, even the EU tax code is not limited to those offshore centres that are an integral part of the European Union, there are territorial application clauses in all of those measures, although they are EU measures in which the Member States undertake to extend their application to non-EU territories which are dependent or associated with them. So certainly places like Jersey, Guernsey and the Isle of Man and even the Caribbean territories and the Dutch territories and the French territories are not safe even from the EU measures although, of course, Gibraltar is much more immediately and directly affected by them. In respect of the measures that are not EU based, the OECD initiative, the G7 initiative, these are applied in common to everybody as they do to Gibraltar and there we are in exactly the same position as every other offshore finance centre. Mr Speaker, I suggest that we now recess until 2.30 this afternoon.

The House recessed at 11.40 am.

The House resumed at 2.35 pm.

HON CHIEF MINISTER:

Mr Speaker, this morning I had got, in my reply, to the point of reviewing the comments of the Opposition Members in respect of certain matters related to economic policy and I think I had covered their comments in relation to employment, training and the finance centre.

So, Mr Speaker, I come to the comments of the hon Members in relation to tourism. Well, what can one say about the contribution of the hon the new Member, Dr Garcia. It is difficult to be generous as one would wish to be given that it is the hon

Member's maiden speech and that one should deal on such occasions with an element of generosity but given that the hon Member's remarks were so outlandish and given that the hon Member was so vehement and strident in his completely unjustified criticism of my hon Colleague, the Minister for Tourism, in relation to tourism matters, I cannot allow his remarks to go by unchallenged. The essence of the hon Member's contribution graphically captured for posterity in the headlines of the Gibraltar Chronicle was that the Government had "no tourism policy". Well, I do not know where the hon Member is living or indeed whether it does not matter where he is living because regardless of what he sees he will say what suits him politically regardless of whether it reflects what he sees in the place that he is living and I suspect that that is probably nearer to the explanation of the truth. Unfortunately for the hon Member I repeat what I said this morning to his new hon Colleague and that is that people in this community have eyes and ears and people use their eyes and ears not only to see the existence and achievement of the Government's tourism policy but also to gauge the credibility of the remarks that the hon Member makes. Everyone recognises not only the existence for the first time in over a decade of a comprehensive and focused tourism policy on the part of Gibraltar, but also the success that it has achieved to date, without of course that meaning that there is not still much to be achieved but I know of no one other than the Opposition Member who feels that the Government have no tourism policy and that such as we have, have achieved nothing. The thrust of the hon Member's criticisms were not, "Well, you have done several things and some have been successful and others have not" or "You have not been as successful as quickly". No, the thrust is that "you have no policy". Well, Mr Speaker, he had better explain that to the international tourism press unless he thinks that the Minister for Tourism has acquired the power to write the international tourism press. He has only got to pick up newspapers to see the terms in which they now speak about tourism in Gibraltar and the Government's tourism policy, or local hoteliers or the airlines or the local tour operators or the United Kingdom tour operators or the local transport companies, if the hon Member does not want to believe it from the Government let

him ask others. In a way it suits the Government for the hon Member to taint himself, as he is increasingly doing with every public statement that he makes, with increasing dosages of political lack of credibility. It suits us to the ground that he should continue to do so and I hope that he does. But really, Mr Speaker, addressing simply the facts of the matter, I have to correct him because he was not even correct on the facts and when he tried to use statistics he used them in a calculatedly devious fashion as I will now seek to persuade him of. "Where are the tourists?" he asked. "Where are the tourists if the Government's tourism policy is so successful?" the answer is that the tourists are on Main Street. They are on Main Street in record numbers; they are there every day of the week; everybody in Gibraltar sees Main Street crammed with tourists practically every day of the week. The hon Member can ask, "Where are the tourists?" everybody in Gibraltar knows it except him. Tourists are there in record numbers. "Why is Main Street not booming?" he asked. Well, it is not possible to educate the hon Member on matters of the economy in the short period of time available to me but Main Street is not booming not because the Government's tourism policy has failed to deliver tourists into Main Street in record numbers which we have done, Main Street is not booming because of the small matter that the hon Member chooses to overlook which is that since this Government has been in office we have had the misfortune of presiding over an increase in the value of sterling in excess of 30 per cent, a third, and the hon Member must be sufficiently acquainted with at least the rudiments of economics to understand that if the price of sterling rises by nearly a third Gibraltar becomes less price competitive to non-sterling people than it used to be. I do not know whether in his photocopying business this phenomenon reaches him but if it does not reach him in his photocopying business, it certainly reaches those shops in Main Street that rely on selling articles to tourists to whom it is now one-third more expensive than it used to be. I hope that that is sufficiently clear for the hon Member to grasp. Mr Speaker, "Why has there been a 60 per cent drop in pedestrians?" he asked. And I said, "Hang on, why has there been a 60 per cent drop in pedestrians?" until I focused on the fact that he was quoting February, March and April 1999 compared with February,

March and April 1998 and I say to myself, how curious that somebody who is wishing to project statistics for the year 1999 thus far to choose to quote February, March and April which is not a traditional quarter and exclude January until it became clear and here is the hon Member's manipulation of the statistics. If it had not escaped the hon Member that the fishing agreement was on the 4th February 1999 and that therefore the January statistics were not tainted by those problems and that had he included January then perhaps the figures would not have been quite as useful to him as they turned out to be. Well, Mr Speaker, the reason why there has been a 60 per cent drop in pedestrians in February, March and April 1999 compared to February, March and April 1998, as if the hon Member had not known it when he put the question, again he must be the only person in Gibraltar who does not if indeed he did not, is that we were having difficulties at the border as a result of the Spanish Government's reaction to the fishing situation. If the hon Member wishes to try and persuade the community that the fall in pedestrian and, indeed, my understanding of the figures is that he is wrong even on that. My recollection of the statistics is that there was a fall in vehicles but not a fall in pedestrians but still the purpose for the point that I am making, well one of them says no and the other one says yes. The Leader of the Opposition says yes, it does not matter because certainly the buses were down.

HON J J BOSSANO:

If the Chief Minister will give way, since he has chosen to mention my name, to correct what he has said. I have not said anything but since he says I have said "yes" what I am saying yes to is the fact that that is what he told us in answer to a question, that there had been a drop in traffic and that the result was that more people were walking and leaving their cars behind. That is the answer we have had before. I do not know whether the answer is correct or not, I am not saying the answer is correct, I am saying, "yes, it is what we have been told before".

HON CHIEF MINISTER:

Fine, we are agreed on that, Mr Speaker. The fact is that the hon Member says that pedestrians were down, pedestrians are not down. Cars may be down. The Hon Dr Garcia may wish to attribute this phenomenon to a lack of Government tourism policy or to a failure in the Government tourism policy but everybody in Gibraltar knows that it is not as a result of a failure in the Government's tourism policy but as a result of Madrid's reaction to the fishing situation. He may wish to abuse one fact to justify another allegation but he cannot do it with any modicum of credibility.

The hon Member wanted to know why there were less cruise ships in 1998 than in 1996. Well, I will tell him but everybody else in Gibraltar also knows but I will tell him since he has asked. The reason is that as a result of the image problems and as a result of the fast launch fiasco and as a result of the previous Government's failure to indicate to the tourism industry any inclination to tackle the transportation issue, the cruise ship industry in 1996 was on the verge of collapse and.....
[*Interruption*] Well, the hon Members know that there is a two-year lag in these matters, that cruise ship companies plan.....
[*Interruption*] Well, hon Members know that the situation that we found ourselves in 1996 was a growing situation in which international opinion began to lose confidence and patience with Gibraltar, gradually. It was not a question of cruise ships pulling out the moment the hon Members started authorising fast launches. But that was the position or how else does the hon Member explain it? Are the hon Members saying that because of this Government's tourism policy, because of it cruising actually fell? [*HON J C PEREZ: Despite it.*] Well, fine, but that is very good, thank you very much, it is the first sincere concession I have extracted from the hon Gentleman. If he says that it is despite the Government's tourism policy, it is (a) a recognition that there was a tourism policy, and (b) a recognition of the fact that the cause for the decline must have been, for some reason, extraneous to tourism policy which is exactly what I am telling him. I am telling him that just as they had brought the finance

centre to the verge of collapse, they had brought the cruising industry to the verge of collapse and Gibraltar was lucky that the General Election came in 1996 just in time for the new Gibraltar Government to turn the situation around which we have done as is now reflected in the fact that the numbers speak for themselves. The Opposition Members' collective desire to make as much background noise as possible on a matter which presumably is of concern only to the hon the spokesman for tourism, I think also speaks for itself.

Mr Speaker, the hon Member wants to know why it is proving so difficult to restimulate the yacht market. I have to tell him that the reason is also.....[*HON J J BOSSANO: That it was also on the verge of collapse!*] Mr Speaker, the hon Member says it as if he is cracking a joke. Does the hon Member not know what everybody in the local marina industry knows and that is that the fast launch activity as one of its side effects killed the potential growth in that industry as well? Yes, and it takes, unfortunately for Gibraltar, even with the efforts that this Government are making, in some areas it is easier and quicker to rehabilitate Gibraltar's image and Gibraltar's market position from the damage caused to it by their performance than in others. And it is true that the yacht market is one of those areas in which our remedial action to salvage the fortunes of that industry are proving more difficult simply because the word of mouth amongst yachtsmen takes longer to circulate than it does to correct general images and impression amongst cruise companies that one can visit individually and explain changes to them. This incredulity on the part of the hon Members about what I am saying is part of their psychosis of not understanding why and how they lost the last election. Well, Mr Speaker, if it had nothing to do with their stewardship of the economy, if it had nothing to do with their conduct of internal Government, if it had nothing to do with their style of Government, if it had nothing to do with how they made people feel then why did they lose the last election? I am offering the Opposition Members a series of explanations to help them resolve that conundrum which is not really a conundrum to very many people except to them because everybody else knows why they lost the last election.

Mr Speaker, the hon Member said, unless I recorded him wrongly which is possible but I do not think my recollection has failed me, he said that hotel bed nights sold were down in 1998 over 1997. The figures that I have is that the figure for 1997 was 143,646 and the figure for 1998 was 144,538. Is he indicating to me that he did not so suggest? Fine, if he says that then I accept it from him. He also said that they were down in January, February, March and April 1999 compared to 1998 and 1997. These are the notes that I have. Just for the record the figures are that in 1997 bed nights sold for the four months January, February, March and April it was 38,732; for 1998 it was 38,097 – certainly 1998 was down on 1997 for those first four months; and in 1999 it was 40,397.

HON DR J J GARCIA:

Mr Speaker, if the Chief Minister would give way. This is all really quite fascinating but I did not go into January, February, March and April in respect of hotels at all.

HON CHIEF MINISTER:

Fine, if the hon Member is now saying that he did not suggest that hotel bed nights sold had fallen fine, then we can move on because we are entirely in agreement. I would just like to add that the hotel bed nights sold is one of the relative success stories. Here we are the first four months in 1999 up nearly 14 per cent over the same period in 1998, notwithstanding that we were without the Caleta Palace, for all intents and purposes, which is one of Gibraltar's leading tour hotels and I think that that augurs very well for the future. We are rising at a time when one of our leading tour hotels is labouring under the effects of its own refurbishment works and external refurbishment works to the road. In 1998 it was only marginally down over 1997 because the Rock Hotel and the Elliott Hotel were also under substantial refurbishment. Hotel occupancy figures have risen from 39 per cent in 1997 to 43 per cent in 1998 even though the hotel industry

has been in the throes of a substantial works programme in that period. We actually think, although I know that the view is not shared by the Opposition Member, we happen to believe that that is a success story.

Mr Speaker, as if the reality of the situation did not speak clearly enough for itself, then we come down to the sort of bear essence of the political attack that the hon Member makes, we have all been in the Opposition and we all know what the role of an Opposition is and we all understand it and accept it and that is fine, it is an important role to play but I just ask myself, Mr Speaker, how can the hon Member accuse the Government of having no tourism policy whilst at the same time his Colleague, the Hon Mr Gabay, rubbishes the Government's Tourism School, he himself criticises the Hotel Assistance Scheme, the Airline Assistance Scheme and the Government's marketing of tourism. On the one hand he says we have no policy and on the other hand he criticises everything that the Government have done in relation to tourism which incidentally everybody else applauds. Well, Mr Speaker, it is up to the hon Member to decide how he conducts himself politically but I would have thought that there were other areas, rather than tourism, in which he might have sought to subject the Government to political criticism. If I had been him I would have kept my head well down and low below the parapet wall on the matter of tourism and I would have found some other issue around which to make his maiden speech in this House. But still, the Leader of the Opposition has saddled him with the difficult, not to say impossible, task of shadowing my hon Colleague, Mr Holliday, on matters of tourism and as his political mentor has handed him that poisoned chalice I suppose he will have to drink from it as best he can. *[Interruption]*

Mr Speaker, it has become fashionable for the hon Member to accuse me and other Ministerial colleagues; I notice that my hon Colleague, Dr Linares, has been the latest victim of it, to accuse everybody of making personal attacks on him. I regret to tell the hon Member that if his definition of personal attacks is simply having pointed out to him with the same degree of aggression the inaccuracy, inconsistencies and misrepresentation to which he

subjects facts, then I regret to tell him that if that is his definition of personal attacks there is more to come.

Mr Speaker, the hon Member said that the size of the profits made by a company, he said he was not sure that it was the best definition of a small company, he said that rather quickly and looking down so I do not know if he just wanted to slip that in and hope we would not hear it and if that is the extent of the importance he attaches to the matter we can move on quickly from it as well. I would just like to point out to him that it is the criteria everywhere else. Everywhere else the definition of a small company for a small company tax rate purpose is size of profits. We are satisfied that especially in Gibraltar's circumstances and not just because it is the case everywhere else, that this is an appropriate criteria. And then in berating the Government's performance on rates, he says, "of course the reduction in the poundage is of no use if the valuations in the Valuation List are not reduced because that defeats the purpose. The Government gives with one hand and takes away with the other". At that point I ask myself whether the hon Member understands how the rate system works at all because the only thing that is fixed is the poundage, which the Government have now reduced and as to rateable values contained in the Valuation List, that is automatically reducible and is in fact reduced on many occasions by the Valuation Officer whose job it is. The hon Member, just by the gesture that he has just done, obviously is under the mistaken apprehension that the function of the Valuation Officer is only to value upwards. In fact, the Valuation Officer in the last few years has spent most of his time valuing downwards on the Valuation List on commercial properties. The hon Member is obviously not aware of this because had he been aware of this, many businesses are having their rateable value reduced on the basis that they have persuaded the Valuation Officer that the market value of their property is falling even if under their lease they have got to carry on paying the same rent or worst still, as some businesses find themselves in, they are locked into leases with automatically increasing rents and there are many businesses who find themselves paying the same or higher rent but nevertheless less rates because they persuade the Valuation

Officer that the market value, whatever their contractual obligation might be, is falling. The hon Member obviously was not aware of that, had he been I am sure he would not have made the remark that he did, at least I hope he would not have made it had he known it.

The hon Member, in another of these passing glancing blows which characterised his address, says "EU funding, not enough is known about it" and yet when my hon Colleague, the Minister for Trade and Industry, and his department publishes regular news sheets we have to bear with accusations that the Government are using taxpayers money for our own propaganda purposes. The hon Member has to decide whether he wants the Government to inform people or not to inform people but if he wants us to inform people he cannot, every time that we do just that, trot out what is presumably now a standard template on his word processor which starts, "The Government propaganda machine". Mr Speaker, the hon Member has the obligation, at least of being consistent; we can either inform or not inform and I think we deserve at least from him the consideration of not being accused by him of propaganda when we inform and of playing cards to our chest and not keeping the public informed when we do not inform. People are beginning to see a little bit through that as well. But still, we believe in giving people rope, especially political rope with which to hang themselves in the certain knowledge that they will do that. The hon Member says, "The Government have not done enough for trade. Trade is now worse off than ever and costs are too high", ignoring the strength of the pound on business which is not something that the Government can help businesses with, ignoring last year's help package but more significantly because of course he had come with his prepared text and nothing that he heard in the House on the day could then be reflected in his own contribution, completely ignoring the package of measures to help small businesses that I had announced which incidentally and ironically the Transport and General Workers Union says gives too much help to business whilst at the same time the so-called socialist opposition says we are not doing enough for business. It is another of those situations in which we find ourselves. I suppose that the GSLP and the Transport and General Workers

Union will have to decide which of them is the keeper of that ideology that decides whether the Government have done too much or too little to help businesses. But certainly as we speak today, the Gibraltar Socialist Labour Party believes that we have not done enough to help the private sector and the Transport and General Workers Union of whom all the Opposition Members boast being members, say that we have done too much for private business. Therefore, Mr Speaker, one or the other is wearing a suit that does not fit him naturally. We have yet to discover whether the Opposition Members are pretending to be pro-business when actually they are not or whether there is a hand in operation in the Transport and General Workers Union which does not reflect the real views of the leadership of that organisation but all will be revealed.

Mr Speaker, instead of acknowledging what this Government have done for small business, the hon Member chooses to join a party, because that is in effect what he has done, he has joined the GSLP, he is in this House with the vote of the Gibraltar Socialist Labour Party and therefore that is the electorate that he represents, instead of acknowledging what this Government have done for small business which is unprecedented in the history of the economic management of Gibraltar, he joins a political party who did nothing in eight years to help private business and who had nothing in their 1996 election manifesto to help business which is presumably one of the reasons why he tore up their manifesto. Given the views that he now expresses about small business one of the reasons why he must have torn up the GSLP's manifesto is because it did not have enough in it about helping small business. *[HON A J ISOLA: He also tore up yours as well.]* Mr Speaker, but our manifesto did have a lot of stuff which simply goes to prove that the hon Member is incoherent. So far were they from having any intention to help small business that it was actually their position that they wanted the hard pressed shopkeeper in Main Street that the hon Member says cannot make ends meet, well his new political partners wanted those same shopkeepers to pay for half of the cost of the beautification of Main Street, a fate from which - it was not in the power of the Chamber of Commerce to pay for it - a fate from

which this Government immediately saved small business at the request of the Minister then for Tourism and Commerce. I think, Mr Speaker, given the views that the Hon Dr Garcia pretends to espouse about small business, he ought to choose his political bedfellows with more care lest he should not find himself having to quickly resign from them when he realises just how unfriendly to small business they have always been when in office. Still, that is a matter for him.

Mr Speaker, and so to the contribution of the Leader of the Opposition. The Government cannot and do not accept his strained interpretation of figures that rising tax yield, despite falling tax rates, does not constitute evidence of economic growth. I am willing to agree with the hon Member that in Gibraltar it is not possible to measure the rate of economic growth and certainly that is one of the reasons why we have commissioned the creation of an economic model for Gibraltar which, amongst other things, will enable the Government to produce meaningful, conventional national accounts which will enable us all to properly measure economic growth. Because certainly the previous year's figures of economic growth that he used to give when he was sitting in Government had always been totally unreliable, unreliable to the extent that when I arrived as Leader of the Opposition and I had the deficiencies of the systems that were used to cobble the figures and when he used to say, "We have got a faster rate of economic growth than Luxembourg" and "We are the fastest growing economy in the whole world" and "We have grown by 35 per cent", when I arrived in his job and I saw the system upon which and the basis upon which those figures were being produced, I refused to allow it to continue. These are Mickey Mouse economic statistics, Mr Speaker, not because the formula is wrong but because the Government of Gibraltar simply lacks the accuracy of statistics to input into the formula. This is what I was told by the Statisticians which were the same for me as for him.

HON J J BOSSANO:

If the Chief Minister will give way. Mr Speaker, I think when I asked him last year whether the discontinuance was a political decision he told me that it was not. He said he refused to allow it to go on so in fact it was a political decision that however inadequate he may think they were, and certainly the Statistician never told me they were inadequate in eight years or my predecessor for that matter. They were the same statistics before 1988.

HON CHIEF MINISTER:

Well, Mr Speaker, I do not want to engage the hon Member on the issue that he has just addressed. Suffice it for me to say that on the basis of information provided to me by the officials in question, I was not willing to take political responsibility for those figures because it would have been just as easy for me to produce figures of the sort that he produced. *[HON J J BOSSANO: I did not produce them.]* Mr Speaker, I would urge the hon Member not to engage me on that specific point.

Mr Speaker, when the hon Member comes to the conclusion that in effect the Government have achieved nothing economically, again he ignores what I call the rescue factor which I know they do not like hearing. But they do not seem to understand, as everybody else appears to have understood, that it has taken a year or two simply to retrieve what had been lost in terms of momentum. Hon Members sit there sniggering from a combination of contempt, ridicule and embarrassment but the reality of it is that this is the reason why they lost the elections, amongst others. This smugness where even three years after the event they are either unable or unwilling to recognise the dire situation to which they had led Gibraltar by 1996, this incredulity, how come we economic miracle makers were ejected from office? They must toss around in their beds at night asking themselves this question. How does it happen that a Government that is elected in 1992 with a majority of 73 per cent who are then the economic gurus that they have been claiming in this House in the

last two days, that they have been; how on earth did they contrive to forfeit a 73 per cent majority? Mr Speaker, it is not my job to answer that question but they are not even asking it themselves. They rubbish every explanation that is given for it, fine because they do so at their continuing political peril which can only operate to our advantage.

Mr Speaker, the figures may not show rising employment. One of the things that I have tried to get the system to produce is credible, reliable figures of the number of people in employment at any given time. The Leader of the Opposition may recall that in one of our exchanges in Question Time he asked me, "Cannot you do it by reference to PAYE cards in issue?" When I went back I said, "Is this not a jolly good idea. Can we not know how many people there are in employment, as opposed to non-employment, by the records?" I was told, "No, because there is churning there are people who change jobs within the year". One of the things that we want to correct by way of the statistical inadequacy which prevails is that we should in future have statistics of how many jobs actually exist in the economy at any given time. I do not know whether these things are measured monthly or quarterly but whatever the statistical system would be so that we do not have to guess at whether the economy is growing in terms of the number of jobs that it sustains.

HON J J BOSSANO:

If the Chief Minister would give way. Mr Speaker, the very point I have been making to him surely is that the Employment Survey that currently tells us how many people there are paying tax in April and October every year happens to be the most accurate measure that there is of those that exist. That is the point. If we are going to put something in its place, the point that I have been making to him is that it seems to me that relying on what employers put in a survey does not have quite the solidity of knowing that there are 13,000 who paid tax in April 1997 and therefore the figure can only be either that or more, it cannot be less than 13,000.

HON CHIEF MINISTER:

Yes, except that we are always dealing with these figures historically and by the time they come out they are really of very limited relevance to the current economic debate about how the Government are doing at this moment in time. Certainly that is why we are working on a system through the ETB records, as my hon Colleague, Jaime Netto, explained to see if we cannot put the ETB records in a state where when the hon Members ask, "How many employment contracts have been approved?" that will be as near an accurate statistic about how many jobs there are. It remains to be seen whether it can be achieved but certainly that is the aim.

Mr Speaker, I realise that the hon Member is not greatly enamoured of our policy of embellishment and flowerbeds and plants and all of that sort of thing but I have to tell him that I think that he makes an error when he so rapidly concludes that this is not revenue creating. The Government are embellishing many parts of Gibraltar for two quite distinct reasons and one of them is not economic at all. One of them is that embellishing the physical environment embellishes the living environment in which residents of Gibraltar live and the Government think that there is a value to that even though there may not be an economic return from it. But there is also an economic reason for doing it and that is that it forms an integral part of the investment in Gibraltar's tourism infrastructure. The hon Member presumably understands, I am sure he does, that tourists like to come to attractive places and that one cannot build a tourism industry on the back of seedy, rundown, unkempt public highways, public monuments and things of that sort. So I realise that there is not a measurable return but it is part of an investment in the sine qua non, as we understand that, of a successful tourism industry; there are lots of things that the Government have invested but we cannot actually measure the return – marketing costs, for example. We all know that if we do not market we are unlikely to prosper in many of these sectors but what we cannot do is the reverse and assess the extent to which a particular marketing expenditure has been successful in yielding what or indeed any return and so these are just strategic

investments made in an industry – I realise that hon Members are not great supporters of tourism as a major sector of Gibraltar's economy but we have a different policy on that and I am sure that they will be sufficiently open-minded to recognise that having made the decision that tourism should be an expanding economic sector, that it is then logical that we do some of the things that we are doing.

Mr Speaker, the hon Member said that Government were spending money as it comes in without knowing where it is coming from and if the same had been done in the past resources would not be there now.

HON J J BOSSANO:

I am unlikely to have said, Mr Speaker, in the way he has put it.

HON CHIEF MINISTER:

Well, Mr Speaker, I would not wish to misquote him so what I can do is, I have not just been reading straight from my note but I will now read to him straight from my note which, of course, is capable of being inaccurate in some degree but it is unlikely that I have completely missed the gist of what he was saying. What he said was, "Government is spending money as it comes in without knowing where it is coming from. If the same had been done in the past the resources would not be there now", and he pressed the button and sat down. Mr Speaker, if that is not what he said I am very happy to now give him the opportunity to correct me as to what he intended or indeed as to what he said if I am misquoting him. Mr Speaker, it really is a matter of some satisfaction to me that the hon Member is now in a position, which I never was at estimates time, to assess just exactly how much the Government are spending. Because, of course, he now has the considerable advantage of having the entirety of the Government's financial disposition and spending plans before him. I only ever had a maximum of 55 per cent of the picture in front of me and, of course, whilst half a picture can be accurate, as one does not know what is in the half that one has not got, then one can hardly

put the thing into the context of the overall. So it is really a matter of great satisfaction to the Government that as a result of our commitment to full accountability open and transparent financial Government, that he is now able, as he should be able to do, here at estimates time, quiz the Government on the basis of a full and intimate knowledge of the entirety of Government spending plans in relation to the entirety of Government's revenue and in relation to the entirety of Government reserves and in relation to the entirety of public debt. So, Mr Speaker, having said that, the reality of it is, I do not know what he meant when he said, "if the same had been done in the past resources would not be there now". We have not spent any of the resources that were there in 1996, I do not know if that is what he meant. Recurrent expenditure is not substantially higher in real terms than it was, for example, in 1995/96, their last year in office, on a comparable reconstruction basis. So given those facts, given that we are not spending substantially more money overall, given that reserves are up, given that public borrowing is down, despite the fact that we have cut taxes I do not see how the hon Member can fairly try and project this picture of a spendthrift Government recklessly spending the family inheritance without making provision for a rainy day. What the hon Member might be interested in knowing is that had we not introduced the tax cuts that we have introduced every year since 1996, the reserves would now be £12.5 million higher. In other words, the cost to the Government of the tax cuts that we have fed through to the taxpayer over the last three years has been £12.5 million. If the hon Member wants to say, "You are being reckless by giving taxpayers back some of their money" we can argue politically about that, that is a matter of political judgement and he is perfectly entitled to his view. We all know that for eight years it was his view that taxpayers should not be given money back, instead the Government should hoard it as a squirrel so that we can all buy baked beans to man the barricades when the time comes. *[HON J J BOSSANO: Bread and water.]* Well, bread and water or baked beans, Mr Speaker, neither is a viable policy for the future of Gibraltar. What he cannot do is to, in the context of rising revenues, rising reserves, falling public debt, accuse the Government of financial imprudence. He can do so but I do not think he does so with merit on his side.

The Leader of the Opposition then raised a series of very specific issues arising mainly from the estimates booklet and I would just like to go through some of those now. The hon Member chastised the Government with an element, but not more than with an element, of justification for having twice, in successive years, made an error at the time of publication of the estimates in relation to the treatment given to public debt servicing. I am now referring specifically to the £900,000 point that arises at page 4 in the summary of estimated financial position for the year 1999/2000. Mr Speaker, it is true that unfortunately the Treasury has made an error in both years, an error which they have spotted on both occasions between the publication of the estimates and the day of the meeting which has been corrected therefore, but it is not true, as I concluded the hon Member was suggesting, that they have made the same error on both occasions. It is true that there have been errors on both years but they have not been the same error although they both require the same remedial action, amendment of the figures in that part of the statement.

Mr Speaker, last year what happened was that the provision was moved from one place to another. In other words, it appeared above the line, so to speak, if the hon Member does not mind my slipping into some sort of jargon, and it was transferred to below the line. This year the error has been that it appeared in both places and it has been removed from one of them. So whereas the position last year was that it appeared in a place and we wanted it to appear in a different place, this year it was the fact that it has been included both in the Consolidated Fund Charges total and also again below the line so that there was double counting and it had to be taken out of one of the two places and in order to be consistent in comparability with last year, it was left below the line therefore taken and stripped out from above the line. If the hon Member's point is that the Treasury jolly well ought to be more careful before it publishes the estimates, then I have to say that I would tend to agree with him but people make mistakes, even two years in succession and I do not believe that the hon Member says this, if I am wrong he can correct me, I do not think he was suggesting that there was anything untoward or

sinister about this but simply that there was an error about which they had been notified at the eleventh hour and I suspect that what he was asking rhetorically was, "Well, were we told as soon as the error was discovered?" I suspect that that is what he was asking but I will certainly give way to him if he wants to.

HON J J BOSSANO:

Mr Speaker, I think if the Chief Minister looks at last year's Hansard when I made the point of drawing attention to this, I was making two points. One was, in fact, that it is certainly not very acceptable to find when one arrives here that a document that has been tabled in the House in April is changed when one sits down to look at it and it was done in two places. It is certainly not something that is very normal but I understand that these things happen, I am not suggesting that there is anything in that that cannot be done except to try and avoid it. But the other point that I was making was that, in fact, the change last year was one that I disagreed with and I pointed out that in our view it ought to be shown as part of recurrent expenditure and the thing that I drew attention to was that on page 17 of the estimates where we have got Consolidated Fund Charges, Mr Speaker, the total recurrent expenditure is £120 million and £120 million is what is shown on the summary except that that is before they removed the £1 million because now the replaced page is £119 million. That is because, of course, the money does come out from the Consolidated Fund and the total coming out from the Consolidated Fund is £120 million and therefore the changed page has the effect that the summary on page 4 gives a different total from the summary on page 17 in the same printed booklet.

HON CHIEF MINISTER:

Mr Speaker, if the hon Member looks on page 20, which is the Summary Consolidated Fund Charges, I think he will find it more clearly explained there.

HON J J BOSSANO:

Mr Speaker, it is not that I do not understand it. I do not need to look at page 20 to have it explained to me, I am perfectly well aware of what it is. It says on page 20, subhead 07, public debt repayments - £900,000 and that produces a total of Consolidated Fund Charges which is £20 million and the £20 million, on page 17, when added to £100 million gives £120 million. The point is that here we have a document that says - Total recurrent expenditure, £120 million on page 17 and if we go to page 4 it says - Recurrent expenditure £119 million and that is because page 4 has been changed from £120 million to £119 million. I am saying that I do not think the change should take place anyway but in any case he must understand that last year he said the way that they are dealing with it produces an anomaly. Here we have an anomaly because we have got a particular expenditure described as total recurrent expenditure from the Consolidated Fund - £120 million in one place and exactly the same thing described in the same way is £119 million in another place and that is an anomaly. Last year, the Chief Minister, when he used his right of reply got very upset because he seemed to be reading into the word anomaly some accusation that they were doing something wrong and I was not saying that last year and I am not saying it this year but I am pointing out, as I think he welcomes because he has made a big song and dance about the fact that he provides all this information when presumably he wants me to read the information that he provides and point out to him that it does not match.

HON CHIEF MINISTER:

I am not sure that it does not match. The information is all there. On one of the pages there is the error. Presumably, Mr Speaker, he has read the whole document and not just the page on which the error occurred.

HON J J BOSSANO:

No, Mr Speaker, at the moment in the printed page 4 the error exists because we have a position where recurrent expenditure of £120 million includes the £1 million and then the £900,000 is shown below the line as public debt net repayments and therefore that £900,000 is deducted from the Consolidated Fund balance twice; once in the £120 million and once in the other place. So the Government correct that by removing the £900,000 from the £120 million except that on page 17 the total is still £120 million because, of course, there it cannot be corrected. So when the final approved estimate appears there will be, on page 4, £119 million and on page 17 still £120 million, that is what I have been pointing out now for over a year.

HON CHIEF MINISTER:

Mr Speaker, so what he is saying is that amongst the pages that were corrected, one more should have been corrected, this one?

HON J J BOSSANO:

It cannot be corrected, Mr Speaker, that is the point. He cannot change the figure of £120 million because as he just himself mentioned, on page 20 the £900,000 is included in the £20 million and therefore the £20 million is added to the £100 million and that produces £120 million. I think, Mr Speaker, perhaps they can look at it, there is no point in holding up the House, as long as the argument I am putting is understood and looked at.

HON CHIEF MINISTER:

Certainly, Mr Speaker, I will have the people in the Treasury consider what the hon Member is saying and see if the estimates booklet needs to be modified. The point, of course, was that the £900,000 had to be removed, as I think he correctly assumed, from the forecast outturn and transferred to the current year's estimate because the debenture that was thought to be repayable before the end of the year actually turned out not to be

so and therefore the £900,000 was not spent last year but will be spent this year when the debenture is repayable.

Mr Speaker, then the hon Member asked how the Treasury had failed to spot the £700,000, the amendment on page 5. Well, the answer is this, when the Moroccan resettlement scheme was implemented Moroccans, hon Members may remember, were asked to come and register their interest in participating; 354 did so. The Treasury assumed that they would all actually participate so these 354 cheques were drawn up physically. In the event only 178 Moroccans with a cost value of £700,000 collected them, the balance of the cheques amounting also to £700,000 were not collected. As the balance of Moroccans were free to come in at any time thereafter, it was not as if there was a closing date, as the Moroccans who had not collected the cheques were free to come in to do so at any time, the Treasury decided to place the funds in a deposit account. The hon Member wanted to suggest that there was no need to place the funds in a deposit account simply because there were cheques out, because cheques were drawn on the Consolidated Fund anyway which is not short of cash, then I would tend to agree with him. But anyway the Treasury decided that the money that under-wrote the cheques that had been issued by Treasury and handed over to the Ministry of Social Affairs pending their collection by the Moroccans, that that money or a sum of money equivalent to that, would be set aside in a deposit account and very simply, Mr Speaker, when the estimates were drawn up the Treasury simply overlooked the fact that this had happened and that this money had been put aside. I am not sure whether they may have thought that the cheques had been collected, once the Treasury issued the cheques they probably no longer took an interest in whether Moroccans were coming or whether or not they were not coming to collect the cheques, there was the Treasury on the one hand, the Department of Social Security on the other and it was only at the last minute, in fact, and this was really at the last minute, that this was picked up and that is how we came to over state expenditure by £700,000. We had not spent £1.4 million, we had spent £700,000 and £700,000 were still lying in the deposit account and that £700,000 therefore should not have been reflected as

expenditure incurred. It was £700,000 expenditure not incurred and therefore cash still in hand. Mr Speaker, that is the background to how it has happened. Of course, in an ideal world it could not have happened either but, again, it is just another error that was spotted too late before the booklet went to the printers and therefore had to be corrected after the event.

Mr Speaker, the hon Member raised the question about the ETB transfer of funds from the Gibraltar Development Corporation to the Consolidated Fund. I am sure the hon Member will remember that section 20(2)(a) of the Corporation Ordinance makes provisions for GDC to borrow from the Consolidated Fund. Section 20(2)(1) provides that if Government consider, in consultation with the Corporation, that the Gibraltar Development Corporation has a surplus, provision can be made for a transfer to the Consolidated Fund or a special fund of a sum not exceeding the aggregate of that surplus. That is just the legal background, the statutory background. In the past, as the hon Member knows, the Consolidated Fund has had to subsidise the ETB. In 1997/98 £1.1 million went across; in 1997 we transferred from the Consolidated Fund, there was a charge on it in favour of the Gibraltar Development Corporation, £3.1 million which were accumulated balances in an advance account in respect of the several years between 1993 and 1996 in which the ETB had just spent money without actually having a provision and they were just booked against an advance account which was running up a deficit and which we took the decision to clear just for bookkeeping clarity. Also in 1995/96 the hon Members, it must have been in that budget, transferred £1 million from the Consolidated Fund to the Gibraltar Development Corporation. Mr Speaker, the repayment of these monies creates the mechanism – and I use the word advisedly – by which funds can be channelled back from the Gibraltar Development Corporation to the Consolidated Fund. Mr Speaker, why do we do that? Because the hon Member says, “Why do you not leave them in the Gibraltar Development Corporation?” Well, Mr Speaker, we have made a policy decision which is also the answer to another question that he raises a little later and that is so that there is maximum transparency and maximum accountability to this

House through the appropriation mechanism because remember that monies in the Consolidated Fund can only be spent with the permission of this House. Money in the Gibraltar Development Corporation can be spent willy-nilly without the Government accounting, at least as an appropriation mechanism, to anybody. Therefore it is Government policy that all surpluses are held in the Consolidated Fund reserves where they are visible and from where they can only be spent subject to the appropriation mechanism control of this House. It does not mean that the funds are not available for training, it does not mean that they have been channelled out of the training purpose, it simply means that they are held in the Consolidated Fund rather than in the Gibraltar Development Corporation and, of course, the Consolidated Fund can transfer funds, can feed the Gibraltar Development Corporation with funds on as-needs basis either from supplementary funding or from any other such source. The other point that I would make on that, Mr Speaker, of course is that Appendix B is not part of the estimates on the appropriation mechanism. When we set out, as we do, at Appendix B the sort of pro forma financial statement profit and loss account, so to speak, expenditure and revenue account more accurately called, of the Gibraltar Development Corporation, that is provided for information, it is not part of the appropriation mechanism and is not part of the budget.

Mr Speaker, the hon Member when talking about Community Care said that last year I had said that there was no increase in the capital provision to Community Care because there was no tobacco revenue and that therefore now that the tobacco revenue was up the Government should restart making payments. Well, I am sure it is not intentional that the hon Member misquoted me. What I actually said was that capital payments to Community Care were not being made because Community Care was currently fully funded to meet its obligations but that the Government had a commitment to increase its financial provision to Community Care to ensure that that remains so and the Government stand by that commitment. The income that Community Care is making from its present capital assets is sufficient to meet its payment out obligations and the Government

see no virtue in tying up capital to meet an obligation which is presently being met but, of course, it is axiomatic that if and when that ceases to be so that the Government will top up the financial provision for Community Care to ensure that they can continue without eating into their capital to continue to make their annual outgoings in terms of payment to the beneficiaries of the trust.

Mr Speaker, just very quickly and in passing, the hon Member expressed pessimism about the predictive value of the input/output study on the basis of experiences with past models. Mr Speaker, I may not have made it sufficiently clear that this model will be specifically constructed as one that will be on-going in terms of its development and build on. It will not be just a snapshot of the economy at the time that it is made. It is a model that is being constructed on computer to enable it to be built up and to enable it to be developed and modified as circumstances change, obviously by people who know what they are doing but it is not a snapshot study, it is not just a study to tell us what the economy is today and let us see what conclusions are brought up so it is more than just an input/output study; it is the creation of an organic model for measuring the economy in the future and once this is done, provided it is maintained it is then available in future years as an on-going tool and it is not a question of doing another study. Of course, the model can be no more accurate than the statistics that are put into it and that is why we have instructed the people who are doing the model also to advise us on what we need to do to alter our statistics gathering and our statistics collation techniques.

HON J J BOSSANO:

If the Chief Minister would give way. Did I understand him right when he said that the same people who did the last one are being contracted to do this one?

HON CHIEF MINISTER:

Yes, Mr Speaker, I understand it is Dr Fletcher but of course it is not just him, it is a team of people not just one man.

Mr Speaker, the hon Member asserted that what the Government proposed to do in this Appropriation Bill, in other words, to appropriate £1 million from the Contingencies Fund to the Consolidated Fund Reserve, the hon Member asserted that that would appear to be not in accordance with statutory provisions and that the two applicable ones would be section 67 of the Constitution and section 44 of the Public Finance (Control and Audit) Ordinance. At the time that he was making his contribution I told the hon Member that the Government had considered this very carefully, that we had sought legal advice and the advice that we have had, I do not mind sharing with the hon Member, is in a sense drawing a distinction between an advance for unforeseen expenditure on the one hand, and the House appropriating money from that fund to another fund without it being expended. That is the distinction that the advice makes. So section 67 of the Constitution provides for a Contingencies Fund to be established by the Legislature and then says that advances may be made from the fund to deal with an urgent and unforeseen need for expenditure and that advance must be then repaid by an Appropriation Bill, that is the mechanism of section 67 of the Constitution. Section 44 of the Public Finance (Control and Audit) Ordinance says that the Contingencies Fund shall consist of monies appropriated thereto. The advice that the Government have had is that "thereto" does not exclude "therefrom" and that a reduction of the amount in the Contingencies Fund is not an advance to meet unforeseen expenditure and it is logical, Mr Speaker. Hon Members may wish to wait until they hear the explanation before they manifest their jest. *[Interruption]* Well, Mr Speaker, the language of the legislation is clearly intended to provide for expenditure of the funds. In other words, the Legislature decides how much money goes into the Contingencies Fund and then the Government cannot use those funds for what they please it has got to be for unforeseen expenditure and then it says, "and that shall be regarded as an advance and it has to then be the subject of Supplementary Appropriation Bill", et cetera. But, of course, we are not in the realms of an advance for unforeseen expenditure and the advice that we have had is that if we do not have an advance for

unforeseen or any other sort of expenditure, then section 67 is simply not applicable. The implication of section 44, that the fund consists of monies appropriated thereto must be that the fund can be reduced by appropriation in the normal course of events; of course not reduced by the Government. The Government cannot decide, "Let us take money out of the Contingencies Fund and put it into the Consolidated Fund" but this House, as an act of appropriation, as an act of statutory appropriation, can say, "We voted to put £1 million into the Contingencies Fund. We now vote to take it from the Contingencies Fund into some other Government Special Fund in a way that does not amount to expenditure of that money but simply repositioning it within the Government's financial structure.

HON J J BOSSANO:

Let me see if I have understood. What the Chief Minister is saying is that notwithstanding the apparent limitation on what can be done with money in the Contingencies Fund, the House can reduce the Contingencies Fund to £1 if it wants to by appropriating any other money in it.

HON CHIEF MINISTER:

Just as it decided whether there should be more than £1 in it in the first place. That is the legal advice that the Government have received. Let us say, for example, that the Government get a report that says, "There are likely to be rockfalls this year" because somebody has come and done a survey and the Government say, "Fine, we had better make provision in the Contingencies Fund for this". The Government would not unnecessarily include in the Estimates of Expenditure expenditure which we might have to incur but which is not foreseen yet to be incurred. The possibility might arise of making a provision for expenditure on unforeseen things that have not yet arisen but which have been indicated might arise. The House makes a provision in contingencies for that and then it turns out that it is an over-provision, for one reason or another, it would be, I think, illogical that that money was then locked in to the Contingencies

Fund and that the House could not say, "Well we made a prudent provision for contingency in certain circumstances, those circumstances have not materialised and therefore the House – not the Government – through an Act of Parliament, which is what the Bill is, through an Ordinance the House says £1 million be taken out of the Contingencies Fund into the Government reserves". Well, I think it is really not fruitful for the hon Member and I to banter across the floor of the House as to the advice that the Government have received. The hon Member has a view on it, we have not made a political view on it, certainly we wanted as part of our general policy to have all Government reserves under one umbrella, where possible, so that people could see the size of the reserves and it seems to us desirable in that context that the £1 million from which alternative provision had been made, be transferred out of the Contingencies Fund but before doing so, because we were aware of section 67, we sought legal advice and, of course, the hon Members should be aware that this is not just done through the budget book mechanism, that there is a clause in the Appropriation Bill doing that. So this is not an administrative act, this is a statutory act that I appreciate the hon Member is asking, "Well does that mean that the House of Assembly can, through legislation, get money back out from the Contingencies Fund other than?" Well the legal advice that we have had is yes.

HON J J BOSSANO:

Mr Speaker, I know that we are in the general principles of the Bill but, in fact, irrespective of the wisdom of having put the £1 million there which perhaps is questionable why it was done in the first place, my reading of the Constitution is that however absurd it may be, it appears to make it a one-way ticket and that is how I have always understood it and I happen to have been here quite a few years. The argument about the Contingencies, well look the fact is that if the Appropriation Bill not only makes it possible to have amounts for contingencies under different heads of expenditure but there is, in fact, a global sum at the end which is supplementary provision which could have been the mechanism

used if it was envisaged that the money was there until such time as insurance premiums were in place.

HON CHIEF MINISTER:

I agree, Mr Speaker, with that. The hon Member is saying, "Why the hell did you put it there in the first place?" Yes, we could have avoided all this by not have putting it in there in the first place. This was in a special fund, I think it was called the Insurance Fund and we could have moved it straight from the Insurance Fund into the Consolidated Fund or any other special fund. So, Mr Speaker, in any event there is the advice. The hon Member will no doubt not blame me for preferring to rely on a lawyer's advice than on his notwithstanding what he calls his experience in these matters, and there it is. The important thing is that it is, in a sense, an academic point because it is not expenditure and it is being done by this House. It is not being done as an Executive Act or it is not being done as an Administrative Act, it is being done as an Act of this House on legal advice which, frankly, although I do not have to judge whether the legal advice is correct, my judgement is that it is probably correct. It is probably correct because in England there is actually a statutory requirement for surplus funds in the Contingencies Fund to be returned to the Consolidated Fund – but if we are talking about statutory interpretation as to whether section 67 of the Constitution fits in at all. If we are talking about statutory interpretation, the intention of the Legislature of course is also a relevant factor and in interpreting the intention of the Legislature what happens in the United Kingdom is not an irrelevant consideration.

If I could move on, Mr Speaker, the hon Member raised the question of coinage on pages 13 and Appendix H which is on page 122 of the booklet and asked why did the revenue from the issue of circulating coinage surplus rise from an actual of £189,000-odd in 1997/98 to a forecast outturn of £510,000 in 1998/99 even though we had only estimated £200,000 and now comes back down to £319,000. I think that was one of the issues that he raised. Well, Mr Speaker, the answer is this, that last year a major exercise to take UK coinage out of circulation and replace

it with Gibraltar coinage was undertaken. The Government encouraged banks to return surplus coins and we then segregated the local coinage from the UK coinage. As a result of that, we then sent the UK coinage away, the result of that was that we were able to replace what had previously been circulating UK coinage with circulating Gibraltar coinage which increases the surplus in the coinage circulation fund and, of course, although the estimate for this year is still higher than it was in 1997/98 because the exercise is not finished, it is in a sense a one-off as a major exercise and if one cannot sustain £510,000 for more than a year. We might be able to continue to do that on an annual basis by having now corrected the accumulation. Doing that on an annual basis may produce an extra tens of thousands of pounds but it is certainly now not going to be as high as £510,000 and that is the explanation for that.

Mr Speaker, the hon Member asked why we had left such a low float in the Social Assistance Fund and the reason is the one that we have just discussed in relation to the Gibraltar Development Corporation, namely the Government's policy of accounting for surpluses and holding cash surpluses in the Consolidated Fund and the hon Gentleman is entirely correct when he surmised from a reading of the Appendix E, that there is no provision in Appendix E for the increase in cost to the Social Assistance Fund of some of the budgetary measures that I have announced this year. So that will have to be supplemented, the measures are not capable of scientific costing. The increase in the Child Welfare Grant changed the threshold from single £20,000 maximum to joint £30,000 has winners and losers and an element of the cost will be self-financing and it remains to be seen just what the cost of that will be. We have a ballpark figure estimate but when people start registering from it we will know just exactly what, if any, will be the shortfall in the Social Assistance Fund this year.

HON J J BOSSANO:

Did the Chief Minister say that the new system will start operating on the 1st July, at the beginning of the new tax year, is that correct?

HON CHIEF MINISTER:

Mr Speaker, I think I said the 1st August on advice from the Department of Labour and Social Security because administratively it will take quite some time for people to submit applications and for them to be processed in conjunction with the Income Tax Office.

HON J J BOSSANO:

Would it be based on what, the income until the end of June for the tax year?

HON CHIEF MINISTER:

That part will not change. Whatever the basis period is for the single man's £20,000 will be the same basis period for the joint married person.

Mr Speaker, on the question of tobacco, the Leader of the Opposition is sent information at his request on a confidential basis. I know that he accepts it on that basis and I have no doubt that he can be relied on to respect that. It was therefore with an element of concern that we heard his hon Colleagues, the Hon Joshua Gabay's threat perhaps to blurt it out. Mr Speaker, the Government do not provide information which is sensitive to the national interest of Gibraltar in confidence to the Leader of the Opposition to have the sword of Damocles then hang over our head by the official Opposition Spokesman for Education and Training on matters which are not even any part of his portfolio responsibility. But having said that, and given that the insinuation behind what the Hon Mr Gabay was saying was "be careful or I will blurt out that really tobacco is as bad now as it ever was before" and without revealing the sort of information that we all agree ought not to be revealed, I can tell the hon Members that the volume of tobacco imports into Gibraltar at present is 43 per cent of what it was in its heyday of 1994 to 1995 which was the heyday of the fast launch activity. It is however 74 per cent of the

1995/96 level so we are still a long way short of reaching the levels of any period before we came to office but – I do not want the hon Members to think that I say this defensively – let me say because the hon Members talk about now gambling and tobacco as if the Government were building our economy on the basis of man vice activities, let me say at the outset that this Government when we were in Opposition did not criticise the Opposition Members for the fact that people came to Gibraltar to buy tobacco. I remember saying clearly that if people want to come to Gibraltar and buy tobacco on a conventional basis of taking it away in cartons as people do across every frontier of Europe, there is no difference between tobacco and cigarettes in that respect. What we opposed and the rest of the community vehemently opposed was the fast launch activity and the culture that surrounded the fast launch activity. I hope that tobacco imports and exports, just as I hope that petrol imports and exports and perfume imports and exports and, for the benefit of my brother across the street, shoes and tee shirts imports and exports into and out of Gibraltar, rises as much as possible provided that business is done in a reputable and conventional manner. So the issue here is not the volume of tobacco that passes through Gibraltar, the issue here is how it is exported and how it is traded in and, frankly, the more people that come to Gibraltar to visit our tobacconists to buy cartons of cigarettes to take across the frontier in carrier bags the better. Therefore let us be clear that the Government draw a very clear distinction between that, which is perfectly okay on the one hand and what used to happen before which was the fast launch activity with everything that came with it on the other which is wrong and which we would not be willing to allow to reoccur. So I do not know if the Hon Mr Gabay thinks that there is some sort of sublime threat of blurring out something which he thinks could be politically damaging. *[HON J J GABAY: Would the Chief Minister give way?]* No, I will not give way to him just as he refused to give to my hon Colleague when he was..... *[Interruption]* No, Mr Speaker, the courtesy of giving way in this House has to be on a reciprocal basis and on a reciprocal basis everybody in this House, to my knowledge, gives way except the hon Member who is the only person whom I am aware of in this House that has

refused to give way and if he chooses to do that he has got to be expected to be treated on the same basis by his Parliamentary colleagues. An elephant never forgets.

Mr Speaker, the hon Member in question last mentioned, Mr Gabay said that I had a predisposition to insult rather than to argue. Well, it is all part of this political tactic of questioning the validity of figures, questioning whether the Government's credentials in terms of insulting, it is clearly emerging as something that they hope to use as a tactic in the coming year. Well, they should not worry, when the right time comes we will commence our neutralisation of that somewhat unconvincing, especially unconvincing lying in the mouths of the Opposition Members. Because, Mr Speaker, Hansard in this House since 1996 will show that insults always initiate from the Opposition Members and then when they have said what they please to the Government, however they please, whenever they please, in whatever terms they please, when the Government respond in comparable or commensurate terms then they say, "You are insulting us" without having the sincerity to question how Opposition Members had addressed the Government at all in the first place. Opposition Members, and it has to be said, have refined the personal insults and the personal abuse as a political style since 1988. I understand that the Opposition Member has not been in the House before 1996 but anybody who has been in this House whilst the Leader of the Opposition was in the Chair that I now occupy, certainly in the five years that I was there, his habitual style of addressing the Opposition was to ridicule and to name-call and to do what he now describes as insulting. I never felt insulted, I just thought it was the man's style, this is how he goes about his debating. Mr Speaker, the record is there, the record of Hansard is there and it is self-explanatory. As to enmity in this House, Hansard will also show that this has existed between the present Leader of the Opposition and all his political opponents since he has been in the House or is he suggesting that his relationship with me now is very bad and that his relationship with Sir Joshua Hassan was very good? Well, it is a matter of documented record the state of his relationship with Sir Joshua Hassan. So the only common denominator of the

relationship between the Leader of the Opposition and the Chief Minister today and the Leader of the Opposition and the Chief Minister that preceded him, Sir Joshua Hassan substantially speaking, the only common denominator is him not me and it is his style, as he used to brag about when he was in Government that "you are either with me or against me" and he takes no political prisoners and that is the style that he has developed. The hon Members may not remember, I do not know whether he took only part in the election campaign, the Leader of the Opposition now feels sore when he is insulted not that we concede that we insult, but since the hon Member makes the allegation. The Leader of the Opposition stood outside this House on the Saturday before polling telling the people of Gibraltar that I was a traitor, it was not enough to get me out of the House of Assembly it was actually important to get me out of Gibraltar. Well, Mr Speaker, that is a pretty hard act to follow and however colourful my language might from time to time be, I am entirely confident that I have come nowhere near the degree of vitriolic hostility that has emanated from Opposition Members to their political opponents, whoever they might be, since the day they reached Government in 1988 and it continues. That is the position as seen from this side of the House, I appreciate that from that side of the House it obviously looks different.

I am quite content to argue with the Opposition Member. He said that I had a disposition to insult rather than argue. No one has ever suggested to me that my powers of argument are so deficient that I should be nervous and coy about having resort to them. Arguing things with people is not something that frankly causes me terrible nervousness or fright so why the hon Member thinks that I should have a greater disposition to insult than to argue is really something that I have difficulty in understanding. I will argue with him whenever he likes but it has got to be on the basis of facts and not on the basis of the.....[*Interruption*] No, I will not give way to the hon Member. The hon Member has to sit down. I will argue with him on the basis of fact but not on the basis of the fiction, of the distorted facts, of the pre-meditated misrepresentation and fiction that he peddles and he also, rather like his new Colleague, the Hon Dr Garcia, has got to understand

the difference between being insulted and simply having his own distortion of facts clearly and unambiguously pointed out to him.

MR SPEAKER:

I think we should get on with the budget.

HON CHIEF MINISTER:

Mr Speaker, with the greatest of respect to you, I am exercising my right of reply. If this issue is improper it cannot be more improper than what it is in reply to.

MR SPEAKER:

I am not saying it is improper.

HON CHIEF MINISTER:

Well, if it is improper I must stop, if it is not improper I can carry on for as long as I like, it is one or the other.

Mr Speaker, as it happens I have concluded the point.

HON J J BOSSANO:

On a point of order, Mr Speaker. He has to give way obviously since it is a point of order. Is there not something about repetition in Standing Orders?

HON CHIEF MINISTER:

Mr Speaker, to my knowledge I have not repeated myself but I can understand that the hon Member would want this part of my address to conclude as quickly as possible, I can understand why.

Mr Speaker, the Hon Pepe Baldachino asked why the Drug Centre had taken three years. Well, we are always happy to expose our facts and our issues to Opposition Members but, of

course, we come back to this issue of the credibility with which the hon Member aims that criticism of delay. We would have liked it to happen much sooner but, of course, let nobody forget that if he had won the last general election it would not have happened at all because they did not do it in eight years and they had no manifesto commitment to do it. But the reason why it has taken us longer than we would have liked are several. Firstly, we had difficulty identifying a suitable site, people thought it could not be in town, that it had to be a physically isolated site and it took us some time to find that, it was an MOD site, the MOD had to be approached and had to agree to make it available. There was then difficulty in agreeing acceptable terms with the trustees that had originally been identified, I suspect that this has been revealed before in Question Time and we had to start again having failed to agree terms with the original set of trustees who basically did not wish to be supervised by the Government's Medical Services in what was going on up there. We then had to find new trustees and start the discussion process with them again and then, of course, was the question of the not insubstantial refurbishment programme that has gone on. I do not know if the hon Member has had the opportunity to visit, if he has not I am sure that the Minister for Social Affairs would be very happy to invite him up there and he will see the extent to which there have been both structural and redecoration works done up there.

Mr Speaker, the hon Member also said that the GSD had done nothing for housing stock. Well, of course, the hon Members did not add very much to the housing list rentals stock either, indeed I think they added practically nothing and their plan was to sell Edinburgh House whereas we have honoured our manifesto commitment to make Edinburgh House available for housing list rental stock and we have spent in excess of £1 million on refurbishment.

HON J L BALDACHINO:

Would the Chief Minister give way? I think if he looks at Hansard when we were in Government and we were asked about Edinburgh House we never said that they were going to be sold, neither did we say that they were going to be for rental. We said that we still needed to make the decision.

HON CHIEF MINISTER:

Well, Mr Speaker, given that in the eight years that they were in Government the decision always went in one particular direction, I think it would have been a reasonably safe assumption for people to conclude what they would have done. It was obviously their policy not to add to the Government rental stock.

Mr Speaker, the Hon Pepe Baldachino also said that my hon Colleague, the Minister for Buildings and Works, had great difficulty in defending the catastrophic performance in Buildings and Works. I have a note here in inverted commas, either I was having tea with the Mad Hatter again or I was *[Interruption]* Anyway, is the hon Member now saying that he was not critical of my hon Colleague's performance in Buildings and Works? Would he like the opportunity to clarify his position on that?

HON J L BALDACHINO:

I was not critical. What I said was that we could compare what they have achieved in maintenance in Buildings and Works when the four years are up. I was not critical of Buildings and Works at any time during my contribution. I was critical on the allocation of housing that is what I was critical on, I was not critical on Buildings and Works at all in any part of my contribution.

HON CHIEF MINISTER:

I see, so the hon Member considers that my hon Colleague's performance as Minister for Buildings and Works is satisfactory?

HON J J BOSSANO:

He did not say that either.

HON CHIEF MINISTER:

It is one or the other, Mr Speaker, either it is satisfactory or it is critical. In any event let me just say quickly and in passing that Jaime Netto has demonstrated, frankly, unprecedented courage to tackle institutionalised structural, historical problems that have besotted Governments of all political persuasions in the Buildings and Works Department. We now have measurable output, we now have measurable value for money, we now have a system where workers' earnings are directly linked to measurable productivity, we now have increased productivity, we now have a management which actually is in management control and we have a control of the procurement and expenditure of the department. Frankly what this House, as the custodian of the public purse should be doing, is applauding, as I now do, the performance of the Minister for Buildings and Works over the last couple of years.

Mr Speaker, I much enjoy discussing traffic issues with the Hon Juan Carlos Perez, in fact I much enjoy discussing almost anything with the Hon Juan Carlos Perez because he is the sort of chap with whom discussion is almost always enjoyable. However, Mr Speaker, my enjoyment of the discussion does not of course mean that I can agree with much of what he says. There is no traffic chaos. What there is is a build-up of traffic for very limited periods of time at peak times and the worst place that I have seen it, and I have been seeing it for several years and he was not able to find the answer, we have not been able to find the answer as I am sure we have both worked at it, is the junction of Europort Avenue and Queensway by Regal House where it takes an age to get out in the morning because the traffic light is green for a very short period of time, it lets a few cars through and I have stood at my bedroom window which overlooks Europort Avenue and as I have been putting on my tie I have been counting this and it is terrible and we have, for example

considered the possibility of removing the lights and putting a roundabout system and indeed other radical suggestions. There is a systematic traffic flow problem. There is also increased build-up, there is no denying that, at the junctions of Winston Churchill Avenue, Corral Road, Smith Dorrien Avenue and Glacis Road. Mr Speaker, it is not necessary to alleviate that build-up that we should reverse, which I know the hon Member is desperate that we should do, that we should reverse our decision to pedestrianise Casemates. The build-up problems that have developed at that junction will be eliminated, hopefully very shortly, without the need to allow traffic to flow through Casemates and of course the hon Member will be able to judge the measure of success that we achieve in that respect.

Although I do agree with the hon Member as to his remarks on the cemetery. I was at a funeral three weeks ago and I was shocked at the state in which the cemetery had been allowed to degenerate in terms of the weeds because, of course, it is looking much smarter with the tarmac path so there are elements of improvement. Of course there are building works now being done to further improve the cemetery but the overgrowing of weeds, which is a situation to which I thought I had tasked Community Projects and that they had a permanent gang there doing nothing but that, has been allowed to degenerate into what is a plainly unacceptable and it is as unacceptable to the Government as it is to the Opposition Member. I agree entirely with his criticism of the Government in that respect and I can give him my categorical assurance that the Government have already, indeed it might already have happened, deployed concentrated resources about two weeks or 10 days ago to try and remedy that situation. I remember I used to raise this problem from the Opposition benches to the Minister then responsible Joe Pilcher and he always used to say, "It is a terrible problem because there is a weed growing problem in that area". So it is a difficult problem to keep under control but we are determined that it must be kept under control because what one cannot have is people macheting their way through knee depth weeds in order to get to their vaults, that is completely and utterly unacceptable to the Government.

The hon Member reminded me about how upset I had become last year when he accused us of preparing to run down the Roads and Sewers Section and I became upset last year for the same reason as I tell him this year. The Government have no plans to run down the Roads and Sewers Section. Indeed the Government are in the process of restructuring the management of the Roads and Sewers Section, relocating it and focusing the roads part of it into a minor resurfacing and intensive road maintenance section. Government are spending a lot of money on street beautification, on road resurfacing and if the Government do not have an in-house facility to maintain it, it will very rapidly deteriorate. Certainly the Government have concentrated on private contractors for the heavier road construction and resurfacing projects and that is intended to continue but it is not intended that this will adversely affect, indeed it may improve, the manpower resources of the Highways and Sewers Section nor indeed the earnings potential of the members of staff in it.

Mr Speaker, on the question of Gibtel, he said that now that the profits and the dividends was what it was whether it was not now time to return some of it to the users, particularly in Gibtel in the context of international tariffs. Well, Mr Speaker, in 1994 and again in 1995/96, the hon Member collected a dividend of £900,000 from Gibtel. It is more or less the same as we are collecting now but I suppose he will wish to remind me of the suggestion that I once put to him from the Opposition benches and that is entirely a legitimate thing for him to remind me of. And his reminder is timely because the reason why we have written down in the estimate Gibtel's and Nynex's dividends this year is not, as I think the Leader of the Opposition suggested it was an indicator of falling economic activity, but because it was and has been for some time our intention to try and prevail upon our joint venture partners that there should be a reduction particularly in the international tariffs which, of course, has an impact on Nynex because of the inter-connectivity key and it is there as a signal to our partners. This has not yet been accepted by the Board, it is a signal of the Government's predisposition to take a lower dividend in order to reduce tariffs.

Mr Speaker, the hon Member spoke about GBC and he asked what was the point of importing canned programmes and, frankly, from what I have seen so far, quite antiquated programmes, given that most of this stuff is available in a number of satellite channels which are themselves widely available. Well, Mr Speaker, I do not profess to be an expert in broadcasting company economics but I understand it is important in order that they have sufficient advertising slots. In other words, they have got to extend their broadcasting hours in order that they can sell advertising slots around more programmes in each 24 hour period. Why imported programmes and not BBC Prime? Well, as the hon Member I am sure remembers, BBC forbids the slotting of commercial advertisements at any point in its programming when we lift it down from them and therefore for GBC to have increased the public service broadcasting programming, as it has very substantially, I am sure the hon Member accepts, and keeping BBC Prime would have meant that they could not have maximised the availability of advertising slots during the 24 hour period.

HON J C PEREZ:

If the Chief Minister will give way. Certainly we will have to see the performance in advertising in the coming year but I need to remind the House that the arguments put to then Government for drawing away from a programme schedule and getting BBC was that the programmes were very expensive to acquire in the market at the time as a result of the advent of television and that there was not sufficient advertisements around the advertising spaces available to be able to pay for the costly programmes that we had to pay. That was the argument that was put then at the time. So we have to wait and see how well or how badly they do on advertising but certainly with the information available to me at the time I was in office, it does not make sense.

HON CHIEF MINISTER:

Well, Mr Speaker, I suspect with the advent of satellite television canned programmes have probably become cheaper for

terrestrial stations to acquire. And I think I should add this, the Government really are not concerned about what happens during times that public service broadcasting is not going on. The Government's concern has always been, as I am sure was and is his, that we should get value for money in terms of local broadcasting. Therefore what the Government extracted from GBC was an increased commitment to more hours of locally produced community service interest broadcasting programmes. Frankly what they do, whether they transmit Dallas or All Creatures Great and Small at three o'clock in the afternoon, is of much less policy importance to the Government because as far as we are concerned the justification for the existence of GBC and for the pumping of public funds into it is the local public service broadcasting output. If GBC wants during the rest of the 24 hour period to broadcast in Chinese or crossword puzzles or whatever programming it needs in order to increase its revenues from commercial sources, I think that that is something that it is less the Government's business than what they do in relation to public service broadcasting which we really have made it our business to make sure, nor is the subvention rising. The hon Members will see that the subvention remains £900,000 – just to refresh the hon Members from 1989 to 1990 onwards the recurring subvention has always been Improvement and Development Fund more or less.....[Interruption] No, I am not making a political point here, he should relax. From 1989 to 1990 it has been £570,000; £640,000; £570,000; £570,000; £985,000 in 1993/94; £1 million in 1994/95; £700,000 in 1995/96; £728,000 in 1996/97; £800,000 in 1997/98; £800,000 in 1998/99; and this year it is only £817,000 which in real terms it may actually be a reduction in the level of subvention. It is an essential part of what the Government have required of GBC that they become more commercially orientated in their attitude and that they fund their own expansion plans and the Government, of course, need to keep that under careful monitoring and review. I am happy to be able to tell the hon Member that as a result of the intervention by my hon Colleague, the Minister for Tourism and Transport, that GBC will now be broadcasting the Miss Gibraltar Show on terms that they have agreed although I cannot tell him what they are, with the promoter of the event. Frankly and I have to tell the

House now after the event when it can no longer be regarded as a publicly issued threat, the Government would have taken a very serious view of GBC's failure to have broadcast the Miss Gibraltar Contest and in that respect we agree entirely with the sentiments of the Opposition Member. GBC exists for the purposes of public service broadcasting, Miss Gibraltar is one of the most intensely public service broadcasting programmes of the year and it would have been unacceptable to the Government and would have brought consequences in its wake, if GBC had omitted to broadcast it on reasonable terms.

Mr Speaker, I am sorry to hear the hon Member insinuate that GBC is not being impartial with him. The hon Member said as much, he said Opposition Members pay their TV licences as well and therefore they are entitled to impartiality of treatment. The clear implication of that was that he suggests that GBC is not being impartial. I do not know what he means by that, I do not know if he has had incidence with them. Frankly what television I watch there is the same mix of Government and Opposition presence on the screen as there has always been although, Mr Speaker, the hon Member has got to make allowance for the fact that during their second term of office, unlike their first term of office, the hon Members were more reluctant to be interviewed on television, not all of them admittedly but many of them were more reluctant to be interviewed on television and this, of course, has an effect on the balance between the minutes on which Opposition faces and Government faces appear on the screen but the hon Member cannot expect that just because they did not want to go on television or were not willing to go on television as frequently as we are, that therefore we should only be allowed to go on television with the same degree of frequency as they did.

HON J C PEREZ:

Mr Speaker, for the benefit of the doubt, let me assure the Chief Minister that none of us are reluctant to go on the air nowadays, it is a question of being asked to do so.

HON CHIEF MINISTER:

Mr Speaker, the hon Member lamented the decline of political debating discussion programmes which he attributed to the result of the 1996 election and I think it is one of the most ironic remarks that has come across the floor of this House during this debate. Is the hon Member seriously suggesting that it is this Government that has discontinued the practice of debating on television? Mr Speaker, the hon Member's memory cannot be that short. Does he not remember that famous night on which GBC left an empty chair for him because he refused to go to a debate? Does the hon Member not recognise that during 1992 and 1996 there were practically no political discussion programmes and that I used to complain of that just as he is complaining now so it is not that it has started now, it was started by them and I used to complain about it then just as he complains about it now the only difference is that now that he is in Opposition it suits him to engage the Government in televised debates which it did not suit him when the boot was on the other foot. Fine, that is the realities and the facts of life but he should not persuade himself that it was in May 1996 that political debates ceased to be featured on GBC television.

Mr Speaker, the hon Member's contribution on the lottery I always welcome because I know he takes a personal interest in this matter. The solution is not easy, there is now Telebingo, there is the National Lottery in the UK, there is competition with the lottery now which historically did not exist. I do not say this in an accusatorial sense but the consensus appears to be that the problems began to set in when the lottery ceased to be conducted on a weekly basis and became fortnightly. I do not know, I have never been a great follower of the fortunes of the lottery except at estimates time. I remember at that time people were confused whether it was this week or next week and one could no longer look forward to it on the Friday, that dilutes public interest which is reflected in lower ticket sales.

HON J C PEREZ:

If the Chief Minister would care to analyse the figures of the returns at the time he will see that the returns were already at the level that they are more or less today and that the change was to try and replace that situation. The change failed to replace that situation even though the first prize increased from £50,000 to £100,000 which was what was supposed to make it more attractive. I am not blaming hon Members for the fact that it continues like that. The only point I was making was that the Hon Mr Britto when he was in the Opposition, used to make references to what the lottery vendors wanted and what they did not want and what I am saying is that the shoe is now on his foot, well instead of lecturing me on what I should have been doing why does he not do anything about it?

HON CHIEF MINISTER:

I understand that there is debate going on between themselves as to what it is exactly that they want and how they think that this situation can be improved.

In conclusion, Mr Speaker, the hon Member, Juan Carlos Perez, talks about the GSD governing on the back of GSLP successes. Well, I will not cover old ground again. The hon Member knows what we in the Government think of what their successes were. I think that a fair analysis of the two terms of office of the Opposition Members is that they did very well in their first term and very poorly in their second term. I think that that is an analysis and if the hon Member refers to his successes in the first term I would acknowledge them to the extent that he refers to successes in his second term I have to respectfully beg to differ with him. I think they had very few successes in their second term, the election results would tend to bear that out and what is more they caused a lot of damage to Gibraltar's economic viability in their second term.

Mr Speaker, he said that projected sources of wealth were GSLP initiated. Well, I do not want to, on this occasion although I am

sure we will be debating it many more times during the next 12 months, but I am not sure that the hon Members would wish to gain credit for Cammell Laird given the circumstances in which it became necessary to recruit Cammell Laird. I think the Government scored a major success in the aftermath of the Kvaerner fracas to recruit a company of the commitment and calibre of Cammell Laird who are now employing 171 people where we were left with zero in ship repairing as a result of the Kvaerner fiasco. It amuses me a little to hear the hon Members sort of chalking up credit for Victor Chandler as well on the basis that they attracted the first offshore betting company. I suppose then we would have to give credit for Ladbrokes which is what he means, not to him but I suppose it would be the AACR, when did we get our first bookmaker in Gibraltar? *[Interruption]* Well, I can tell the House that whatever their successes might be what they cannot do is chalk up for themselves any success that we might enjoy – I know they do not begrudge us but they begrudge it to us to the extent that they seek publicly to chalk it up to their own chitty by saying, "Victor Chandler who is now employing 240" where he was employing none when the hon Members were in office "Victor Chandler is down to the great GSLP economic miracle because somebody else was already doing that here before them in the form of Ladbrokes". The operations are not that similar I can tell him and the Victor Chandler operation is on a massively different scale I understand, to the Ladbrokes operation. It is much more job intensive, it has been structured in a much more revenue advantageous for Gibraltar way than the Ladbrokes operation was structured by Opposition Members and I think that there is no way and those two companies that this Government have attracted to Gibraltar, Cammell Laird and Victor Chandler between them, just two, are employing 410 people. The hon Member will forgive me if I do not let him get away with trying to give the people of Gibraltar the impression that everything good that happens in Gibraltar is down to them – companies are down to them, whoever we attract to Gibraltar is down to them, every project was thought of by them, tax revenue rises now does not reflect economic growth because all we are doing is collecting arrears in respect of trading profits and whilst the GSLP were in office..... Well, Mr Speaker, it is beginning to become a little bit

systematic an argument for it to be credible. Mr Speaker, I repeat, in closing now, to the hon Members that this budget notwithstanding the comments that they have tried to make in criticism of it, that this budget represents a fair balance between the collective needs of this community represented by the Government on the one hand and the right of individuals to keep, for the benefit of their own personal economies, the greatest part of their own earned income. And what is more that that is done in a way which maintains reserves at a prudent level, which maintains debts at a prudent level and which allows for investment in our on-going infrastructure programmes. I therefore, Mr Speaker, tell the hon Members that nothing of what I have heard them say during these two days alters my commendation of this Bill to the House.

MR SPEAKER:

Does the Financial and Development Secretary wish to reply?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

No.

HON J C PEREZ:

Mr Speaker, if I can explain it to you because it is not really a point of order. They might be able to explain it in the Committee Stage but I think we have made points about electricity arrears, Land Property Services which have not been answered.

HON CHIEF MINISTER:

Mr Speaker, they will be answered at the Committee Stage. We regarded them as simply too detailed to debate but they will all be tackled.

Question put. Agreed to.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

Question put. Agreed to.

The House recessed at 5.00 pm.

The House resumed at 5.20 pm.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

I have the honour to move that the House should resolve itself into Committee to consider the Appropriation (1999/2000) Bill 1999 clause by clause.

THE APPROPRIATION (1999/2000) BILL 1999

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

Clause 2 – Consolidated Fund Expenditure

HEAD 1 – EDUCATION, TRAINING, THE DISABLED, YOUTH AND CULTURE

Head 1 - A – Education, the Disabled, Youth and Culture

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

Subhead 4 – School Expenses

HON J J BOSSANO:

On School Expenses, in subhead 4(d) Examination Expenses, the estimate last year was £125,000 compared to £96,000 in the previous year which I think reflected anticipated increased costs

and in fact the amount was not spent, £105,000 was spent. Can the Minister tell us, is it that there were less people taking examinations than were originally anticipated when the estimates were prepared?

HON DR B A LINARES:

Yes, that is always the case. We estimate at the maximum number that the schools report are sitting examinations at the end of the year but throughout the year there are a number of dropouts, to put it that way, who do not sit the exam apart from those who are absent or they are ill, it is a general pattern.

Subhead 4 – School Expenses was agreed to and stood part of the Bill.

Subhead 5 was agreed to and stood part of the Bill.

Subhead 6 – College of Further Education

HON J J BOSSANO:

Can I ask, Mr Chairman, in the College of Further Education, in relation to training, if we look back at the accounts of the Gibraltar Development Corporation there was at one stage a movement of over £1 million a year which went from ESF funding into providing support for the College for the courses they were running. Can the Minister say whether there is still ESF funding for the College courses and, if so, where that is reflected?

HON DR B A LINARES:

Mr Chairman, yes there is ESF funding for some of the courses which are run under the auspices of the College of Further Education and it is reflected under the training and development courses vote which is in Appendix B.

HON J J BOSSANO:

What is the inter-relation between the expenditure then in Appendix B and the expenditure that is included out of the Consolidated Fund in respect of those courses?

HON DR B A LINARES:

What I can say is that a number of courses which are run by the College of Further Education which classify, qualify or are to be seen and perceived as training courses will qualify to draw on ESF funds.

HON J J BOSSANO:

But I want to know what they are. What I am asking, Mr Chairman, is given the fact that we have got a situation where payments are made by the ETB to the Government which is something that we questioned; the £800,000 training and development courses in this year's estimates in Appendix B – is some of that money to pay for courses in the College of Further Education? It is, well then if it is, how then is that consistent with the rationale of money going into the Consolidated Fund to fund the expenditure and training by the Consolidated Fund? How does the College get the money?

HON DR B A LINARES:

I do not understand the question, Mr Chairman, quite honestly.

HON J J BOSSANO:

Let me rephrase it, Mr Chairman. We have in Appendix B Training and Development Courses - £800,000 and we have further down that same column Reimbursement of Consolidated Fund Expenditure Annual Training Expenses - £332,000. If there is a lecturer in the College that is paid out of personal emoluments in Head 1A, is that recharged to the ETB and if it is recharged to the ETB how does the money get from the ETB in the £800,000 to the

Consolidated Fund because the annual training expenses, £332,000, appears as an item in Appendix B by way of explanation but in terms of appropriation it appears on the expenditure side of the estimates and is shown on the revenue side of the estimates as well.

MR CHAIRMAN:

I know this has always been the style of the House to have a question and answer session in the Committee Stage but that is not the function of the Committee. The function of the Committee is where there is an appropriation and you want to query it you move an amendment. £5 less, you say what you want to say and that is debated but if this is a question and answer session they will not be prepared for that.

HON J J BOSSANO:

With all due respect, Mr Chairman, it is how it has been done in 27 budgets so far to my knowledge.

MR CHAIRMAN:

Maybe they never had such a good Speaker in the past.

HON J J BOSSANO:

I think if we get told in the general principles of the Bill that the minutiae by the Chief Minister have got to be raised now and now you tell me that the minutiae cannot be raised now then if somebody will tell me when I raise the minutiae I will.

MR CHAIRMAN:

It can be raised very easily. All you need do is just, for example, in that particular vote, the College of Further Education, "I move that it be reduced by £1,000" and then you have got a motion that is debated.

HON J J BOSSANO:

I am not trying to reduce it by £1,000 that is the whole point. I am trying to discover what it is.

HON DR B A LINARES:

Perhaps it will help if I tell the hon Member that the £332,000 under annual training expenses which are reimbursed to the Consolidated Fund expenditure is not to pay the lecturers in the College of Further Education, it is to pay the instructors in the Construction Training Centre and the management of the Construction Training Centre and indeed also the Training Officer. This is personal emoluments under Head 1 – B

HON J J BOSSANO:

I am aware of that. The point that I am making and will repeat, Mr Chairman, is that given that the £332,000 is reimbursement of Consolidated Fund expenditure from Head 1 - B, I am asking if there is expenditure for Head 1 - A which is financed out of the £800,000 then how is that reimbursed?

HON DR B A LINARES:

The only expenditure under Head 1 – A which is reimbursed from the £800,000 under training expenses – I cannot give the hon Member the actual detail courses but there are a number of professional courses which are defined as training courses which draw funding for running expenses from this vote.

HON J J BOSSANO:

And my question, Mr Chairman, is given that explanation I have assumed that already. When I look at the estimates I say to myself, well there is in Head 1 – B we are going to vote £269,000 of training and that training, there is a footnote which says that that is being recharged, as it were, to the ETB and that is the £332,000. If I have asked given that in previous years in this

House we have had the Gibraltar Development Corporation accounts, if hon Members will look into those accounts they will find that there is for the 1996 year, College of Further Education - £1.3 million. I am asking, in 1996 there was £1.3 million of expenditure in training by the College which was funded by the ETB. If in this year we have expenditure funded by the ETB in the College and if that is coming out of the £800,000 then how is it transmitted from the ETB to the College, does it go through the Consolidated Fund or not? Because if it does not go through the Consolidated Fund then it seems to me that if the course of the training involves expenses which are included in the expenditure shown on page 23 then there must be necessarily, as there is in the item in Head 1 – B, there would have to be a parallel instrument in respect of Head 1 – A. For example, we have got here £81,000 College of Further Education, it is obvious that it costs more than £81,000 to run the College of Further Education so I assume that some of the expenses of the College of Further Education are included in the other subheads and that when the cost of a course is established there is an apportionment of the expenditure of the College on the basis that there is a contribution made by allocating a proportion of the cost to different courses. If that is then funded by the money in Appendix B in ETB then we would like to be able to identify and I am asking whether it is identifiable. It just seemed to me that in the expenditure the item which I could make use of to raise this point for clarification was the College of Further Education, Mr Chairman, I could not see any other place where I could do it.

MR CHAIRMAN:

What I am trying to say, I know you are more experienced, that this is not a question and answer session. You ask a question and you have got to accept the answer.

HON J J BOSSANO:

I have not had an answer.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I am still not entirely sure what the question is but let me see if I can have a go. The College of Further Education has two sources of funding; some of it is money that comes from the Consolidated Fund and voted by this House and some of it money from the Gibraltar Development Corporation. That is exactly the same arrangement that has existed for many, many years and they have not been changed in the restructure of the finances, it is exactly the same. So, in fact, subhead 6, College of Further Education, those £81,000 is to contribute to the running expenses of the College. Some of the personal emoluments in industrial wages reflects staff in the College of Further Education and the GDC makes a contribution, a significant proportion of those £800,000 for the running of courses and that could be both, I think I am right in saying, financing people and programmes. I hope that clarifies the situation. In terms of who handles the money in the mechanism, it all passes through the Treasury.

HON J J BOSSANO:

Yes, but then what we are being told is that in this particular instance then the money goes from the ETB to the College without passing through the Consolidated Fund, that is what I have just been told?

HON CHIEF MINISTER:

When the hon Member says ETB he means the Gibraltar Development Corporation?

HON J J BOSSANO:

Yes, of course.

HON CHIEF MINISTER:

Yes.

Subhead 6 – College of Further Education was agreed to and stood part of the Bill.

Subhead 7 – Scholarships

HON J J BOSSANO:

On scholarships, Mr Chairman, the mandatory amount, if we look back at the relevant Appendix I think the explanation that was given on the changes in the funding of the scholarships, I got the impression that what we were talking about was increased funding. I do not know whether in fact the Minister actually used those words, I simply remember that he did. But when we look at the amount that is being put in the Consolidated Fund it does not seem to be more than the normal increase as has been provided in other years. Is any of the extra costs of the changes that are being introduced this year reflected at this stage in the estimates or not?

HON DR B A LINARES:

Is the hon Member referring the new changes; the increases in the educational grants announced as part of the budget?

HON J J BOSSANO;

That is right.

HON DR B A LINARES:

No, they are not reflected in these figures.

HON J J BOSSANO:

So in fact the money we are voting is on the basis as it was before those changes, am I correct?

HON DR B A LINARES:

Yes.

Subhead 7 – Scholarships was agreed to and stood part of the Bill.

Subheads 8 to 11 were agreed to and stood part of the Bill.

Head 1 – B – Training

Subhead 1 – Personal Emoluments

HON J J BOSSANO:

Could I ask, Mr Chairman, there have been further intakes of people in the Construction Training Centre. Given the fact that we have now got different groups in different years, I take it this is, in fact, other than the change from industrial to non-industrial, we are still talking about the same complement of instructors that there were initially. Will there be a need, as we get people in year 1, year 2 and year 3 and therefore consequently the total number is higher than when they started, will there not be a need to have more instructors given that people are at different levels, as it were, in the system?

HON DR B A LINARES:

The need is at this stage not perceived because the groupings have actually been because of the multiplicity now of training courses and opportunities for training courses in other areas like Cammell Laird, the School of Tourism and other forms of training schemes, the numbers now being selected, there are plenty of applications but the outcome yields groups in the Training Centre which, at the moment, seem manageable with the present complement of staff. So the need for increasing the staff is not perceived at the moment, I have to say.

HON J L BALDACHINO:

Mr Chairman, will the Minister say even in the bricklaying trade there will not be a need to employ another trainer in that trade seeing that that is the only one that can go up to level 3 in the Training Centre and therefore there might be a bigger extension of people in the Training Centre in that particular trade?

HON DR B A LINARES:

The need has not been brought to my attention by either the management of the Training Centre or by the Training Officers. With regard to that specific case of the bricklaying being now upgraded to level 3 NVQ, remember that a great part of the training at level 3 actually goes out to the placements in on the job and on the site so again it balances and compensates for the need of the instructor within the premises of the Centre.

Subhead 1 Personal Emoluments was agreed to and stood part of the Bill.

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

Subhead 3 – Bleak House Expenses

HON J J BOSSANO:

Mr Chairman, are these expenses related to all the activities in Bleak University or just the Construction Training Centre?

HON DR B A LINARES:

It is the Bleak Training Institute... *[HON J J BOSSANO: An Institute already.]* I am glad the penny dropped. It covers all the expenses.

Subhead 3 – Bleak House Expenses was agreed to and stood part of the Bill.

Subhead 4 – Gibraltar Development Corporation Staff Services

HON J L BALDACHINO:

Mr Chairman, can the Minister state what that entails, what services is that?

HON DR B A LINARES:

It is the salary of the caretaker in Bleak House. There is an element of overtime involved.

HON J J BOSSANO:

Mr Chairman, did the Minister for Health not say that the Nursing School was now here as well?

HON K AZOPARDI:

I said that it was there physically but not in an expenditure sense or anything like that.

HON J J BOSSANO:

So in terms of the other charges, in terms of, for example, electricity and water and so forth, is there any kind of apportionment charged to the Health Service?

HON K AZOPARDI:

We have not really discussed it but it is a possibility but I think he has views on that himself and he has generously so far not asked me to pay for anything.

HON DR B A LINARES:

I was going to say that at this stage we are being generous, I cannot guarantee in the future.

Subhead 4 – Gibraltar Development Corporation Staff Services was agreed to and stood part of the Bill.

HEAD 2 – EMPLOYMENT AND BUILDINGS AND WORKS

Head 2 – A – Employment

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

Subhead 4 – Operational Expenses

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I would just like to point out that subhead 4(e) should read 4(d) and in fact it should read, "Health and Safety Programme" rather than "Health and Safety Week".

Subhead 4 – Operational Expenses was agreed to and stood part of the Bill.

Subhead 5 – Rent and Service Charges

HON J J BOSSANO:

Mr Chairman, in the original estimate there was no subhead on rent and service charges in 1988/89. Is this in respect of the New Harbours and that is payable to whom, to a Government company?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Yes, that is exactly right, it is New Harbours and it is payable to the Government company.

Subhead 5 – Rent and Service Charges was agreed to and stood part of the Bill.

Subhead 6 was agreed to and stood part of the Bill.

Subhead 7 – Contribution to Gibraltar Development Corporation – Employment and Training

HON J L BALDACHINO:

I suppose that is a token figure, is it?

HON J J NETTO:

Yes.

Subhead 7 – Contribution to Gibraltar Development Corporation – Employment and Training was agreed to and stood part of the Bill.

Head 2 – B – Buildings and Works

Subhead 1 – Personal Emoluments

HON J L BALDACHINO:

Mr Chairman, on personal emoluments, under forecast outturn, for bonus payments, am I correct in assuming that in an answer last year I was told that that bonus payment was for the supervisory grade and it was based on bonuses that were paid also to the industrial workforce? How does that one work?

HON J J NETTO:

That subhead should not be confused with the bonus payments for the industrials, that is for the non-industrials.

HON J L BALDACHINO:

Yes, I understand that but if we look at the estimate it was £50,000 and they spent £29,000 yet on the industrial side, which are the ones they have to supervise, there has been an increase on the bonus payments. There is no relationship between the non-industrials and the industrials?

HON J J NETTO:

There was originally. I recall that there was a 5 per cent which used to go to the non-industrials but the ceiling was lifted and therefore the two are completely separate from each other; one relates to the non-industrials which is the one we are referring to and the other one relates to the industrials so part of the confusion perhaps of the hon Member is in relation as it started originally where it was 5 per cent incorporated into the non-industrial which is not the case any longer.

HON J J BOSSANO:

Mr Chairman, when he says it is no longer the case, the ratio last year in the estimates of last year was that the bonus payment to non-industrials was 10 per cent of the one to industrials. It seems to have finished closer to 5 per cent having started at 10 per cent. The outturn is not compatible with the original estimate. Is it that during the course of the year the system was changed?

HON J J NETTO:

I do not necessarily see the relationship as the Opposition Member is putting it between.....

HON J J BOSSANO:

Subhead 1(e) and subhead 2(d) – one is £50,000 and the other is £500,000.

HON J J NETTO:

What we have seen, in relation to the second one, the industrial, it has increased from £500,000 to £650,000 because practically productivity levels amongst the industrials has increased hence the reason why we have had to put it up by £150,000. But the relationship which the hon Member seems to try to draw here

between one and the other, between the industrials and the non-industrials, not necessarily follow suit.

HON J J BOSSANO:

We are now on subhead 1(e), bonus payments and we are talking about the forecast outturn 1998/99. In last year's budget £50,000 was put there and that was related to £500,000 bonus payments to industrials so there was a ratio of 10 : 1 between the two. The outturn is that the industrials is £560,000 and the non-industrials is £29,000 and therefore the relativity between the two, which is the point my hon Colleague made, which was there in the budget of last year, in the course of the year – we are not talking about what we are voting from the beginning of April, we are talking about the figure ending the 31st March, the forecast outturn 1998/99 which is £29,000 bonus payments.

HON J J NETTO:

I do not quite understand the point.

HON J J BOSSANO:

The point is, given the fact that when we voted £50,000 it was on the basis that the work of the industrials would attract £500,000 and that the share of the non-industrials in relation to that £500,000 was 10 per cent which was £50,000, how is it that the non-industrial element of that bonus has gone down when the work done in the year has gone up?

HON J J NETTO:

Well, the only explanation I can give is, as the hon Member can see, the forecast outturn in relation to the bonuses as applied to the non-industrials, despite the fact as he has just stated, that the industrials has increased. It shows that one has increased and the other one has decreased. I cannot give an explanation why it has decreased for the non-industrials other than what they are actually being paid.

HON J L BALDACHINO:

Is the Minister then saying that there is no relationship whatsoever between the supervisory staff and the work that the industrials do, is that correct, in the bonus payments?

HON J J NETTO:

Not entirely, I think it is a question that there is some relationship but one is not dependent on the other. There is some relationship obviously in relation to the supervisory work that the supervisors and the PTOs carried out and the planned work for the industrials to that extent but obviously it means that either not all the supervisors are meeting some of the targets and other obviously do not and hence why the estimates for 1998/99 did not turn out to be that they have all been paid.

HON J J BOSSANO:

Is the Minister in a position to explain how the system works?

HON J J NETTO:

Is he referring to the industrials or the non-industrials?

HON J J BOSSANO:

No, Mr Chairman, in looking at the amount of money that we are voting and in looking at what we voted a year ago and what has happened in the course of the year, we are trying to understand how the system works. As we understood it a year ago, it was on the basis that the percentage going to the industrial workers - we were told that, had gone up - and the percentage going to the supervisors had been cut. Obviously even cut it is a percentage of the output, that is to say, if more work gets done then logically one would expect that the workers would get more and the supervisors would get more because more work has been done.

What we find difficult to understand is how one has gone up and the other one has gone down. Is there any explanation for this?

HON J J NETTO:

I cannot give an explanation for that.

HON J C PEREZ:

In fact, if we look at the provision in the estimates for this year percentage-wise is still a bit lower than the forecast outturn because £40,000 of £650,000 is less of a percentage than £29,000 to £560,000. Is it that the bonus can provide that people work with less supervision or that the supervisors are not linked to the work that is connected to the bonus?

HON J J NETTO:

Of course they are linked, at the end of the day the supervisory grades have to prepare the work for the industrial workforce, they have to prepare all the various package as far as the specification of each particular estimate for the industrials to carry out. But I, quite frankly, cannot give an explanation to what the Leader of the Opposition has just said in relation to why it has been underspent, I cannot give that explanation.

Subhead 1 – Personal Emoluments was agreed to and stood part of the Bill.

Subhead 2 – Industrial Wages

HON J L BALDACHINO:

On the forecast outturn for last year, on subhead 2(d) which is £560,000 can the Minister tell me how much has been spent on each of the three different sections?

HON J J NETTO:

No, I have not got that kind of detailed information in front of me.

HON J L BALDACHINO:

Can the Minister state if in Subhead 2(b) what we are estimating now and what we have spent, of the £20,000 and we are estimating now £34,000, is it just overtime as for last year when the Minister said that it was for the people who are on the machinery side?

HON J J NETTO:

Two factors. Yes, that is correct, it is for Saturday working, for the people working the woodwork machinery. But now additionally the increase there also reflects the fact that we are putting the work with the National Day festivities which Buildings and Works contribute every year so that higher level also brings that factor into account.

Subhead 2 – Industrial Wages was agreed to and stood part of the Bill.

Subheads 3 to 5 were agreed to and stood part of the Bill.

Subhead 6 – Housing Maintenance – Materials

HON J L BALDACHINO:

Mr Chairman, what does the estimate of £1 million cover? Is it for major refurbishment and for the day-to-day spending on materials in the department?

HON J J NETTO:

Is he referring to work being put out to contract?

HON J L BALDACHINO:

No, that I suppose is for materials that is spent by the employees in Buildings and Works. What I am saying is the £1 million, is it that the materials are twofold, does it cover the daily requisitions and does it also cover major works?

HON J J NETTO:

Yes.

Subhead 6 – Housing Maintenance – Materials was agreed to and stood part of the Bill.

Subhead 7 – Housing Wardens – Materials

HON J L BALDACHINO:

Mr Chairman, is that for cleaning materials?

HON J J NETTO:

It is cleaning materials and without being 100 per cent sure, I think it also covers for bulbs.

Subhead 7 – Housing Wardens – Materials was agreed to and stood part of the Bill.

Subheads 8 and 9 were agreed to and stood part of the Bill.

HEAD 3 – ENVIRONMENT, HEALTH AND CONSUMER AFFAIRS

Head 3 – A – Environment, Heritage and Consumer Affairs

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

Subhead 6 – Heritage

HON J J BOSSANO:

Mr Chairman, Subhead 6(e) – Running of Museum, there is an increase in the amount that is paid. Is there a particular reason for it? We had a situation where it went down from 1997/98, less money was provided and now it is going up.

HON K AZOPARDI:

I cannot explain the descent of the sum from 1997/98 to 1998/99, I cannot explain that because it is contractual and if I remember rightly there is always an index link clause so I cannot explain why it went down, I will certainly look into it if the hon Member wishes. The reason for the increase this year is because we are providing an extra amount of money to recruit a further officer for the museum so I can explain the increase but not the decrease unless the Financial and Development Secretary has an explanation for the decrease.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I think it is to do with the fact that as part of the contract with the museum a couple of the people have now come back into Government as part of the terms when the museum contract was let and that is the drop from 1997/98 to 1998/99.

HON J J HOLLIDAY:

Mr Chairman, I think that these were information officers which were under the Knightsfield Holdings contract in which they were included and they were transferred to the Gibraltar Development Corporation and the Gibraltar Tourist Board.

Subhead 6 – Heritage was agreed to and stood part of the Bill.

Subheads 7 and 8 were agreed to and stood part of the Bill.

Subhead 9 – Refuse Collection

HON J J BOSSANO:

Mr Chairman, in the service provided by Gibraltar Industrial Cleaners, how is this affected by this contract that was put out which would involve management of Gibraltar Industrial Cleaners as well?

HON K AZOPARDI:

It is not affected in a financial sense so if it is a budgetary question. *[HON J J BOSSANO: it is a budgetary question.]* Well, then it will not be affected. The end effect will be that there is going to be management of Industrial Cleaners but there is no financial implication to that.

HON J J BOSSANO:

But in the £1 million under subhead 10, is there not a sum there for managing Gibraltar Industrial Cleaners which obviously previously was not the case?

HON K AZOPARDI:

That sum of money covers the employees of Industrial Cleaners.

HON J J BOSSANO:

I know, I am aware of that. The question that I am asking, Mr Chairman, given that subhead 10 which says Street Cleansing and Associated Services – Contracted Services and there is a footnote which says, "One contract including the management of Refuse Collection service is out to tender". Well the management of the refuse collection service did not form part of subhead 10 in previous financial years, it does this year. I am asking, in that £1 million is there a sum of money which is for the management of Gibraltar Industrial Cleaners?

HON K AZOPARDI:

No, Sir, that sum of money will be reflected in the sum of money of the successful tenderer so it will be reflected under Street Cleansing and Associated Services, the following subhead, and not under subhead 9. The element of financial implication for the management of Industrial Cleaners will be under subhead 10 and not subhead 9.

HON J C PEREZ:

Mr Chairman, since the bulk of the money has to do with wages there and the forecast outturn and the estimate was £1,080,000 what is it that they are expecting less money to be spent on wages or overtime because one would have supposed that there should have been an increase to take account for increases in wages rather than a decrease, it is £80,000 in relation to £1 million but perhaps there lies the

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I think it is a simple one, it is that the Treasury have taken over the contractual arrangements with Industrial Cleaners in terms of the day-to-day management of the money flow and it is now estimated that that is what it will cost.

HON J C PEREZ:

Where have the people who were managing Industrial Cleaners been shifted to? Those £80,000 were probably there to cover the wages of the people who were managing it before it passed on to the Treasury, where are they shown now this year?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

No, as far as I am aware, the Minister may be able to help on this, there has been no change in the employment base at all. This is just simply through looking at the mechanisms the way the

contract works. We have been able to cut it down to an estimated £1 million from £1,080,000 and that is simply it, there are the same number of employees and through efficiency.

HON K AZOPARDI:

I can confirm that. As far as I am aware there has been no change and because the Treasury now have the staff and are looking at this, it is a Treasury assessment. I cannot explain the basis of that.

Subhead 9 – Refuse Collection was agreed to and stood part of the Bill.

Subhead 10 – Street Cleansing and Associated Services – Contracted Services

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, subhead 10 we would like to split into subheads, (a) and (b) – (a) would be the materials and sundry costs which we would like to keep as £50,000 and the contracted services (b) would be the £950,000 so the subhead will remain as £1 million in total.

HON K AZOPARDI:

If I can explain that. We are splitting it up so that I can have the £50,000 back that is because the £50,000 which was merged should not have been merged in the first place because my department has always had a sum of money of between £50,000 and £60,000 which has nothing to do with cleaning, it has got to do with things like removal of dangerous trees, ad hoc emergency environmental projects that are carried out, general payment of watering of plants, if new projects are carried out through the year that are not provided for in any else's budget, that sort of thing. So that needs to be provided and has nothing to do with cleansing. In relation to the £950,000 figure itself that, of course, is subject to

the tender award and it may be a completely different figure once that is awarded.

HON J J BOSSANO:

I asked in subhead 9 about the element of management of industrial cleaners that would be provided in there and the Minister said that is in subhead 10 so I am asking now that we are in subhead 10 what I asked in subhead 9.

HON K AZOPARDI:

What I meant was that it is under subhead 10 generally in that when people have tendered for the service in the tender form at the back of the documentation they have been broken down into individual services so that we have been able to assess the tender properly. One of those elements has been management of industrial cleaners so when the final figure is inserted into street cleansing and associated services – contracted services, that figure which will be inserted and the cost, which will be this year will cover an element in respect of industrial cleaners. Whether Treasury will then seek to include it as a separate item or as part of the merged total is something that I have not discussed but it will be included in a financial sense in that subhead.

HON J C PEREZ:

Mr Chairman, I know for a fact that there is at least one individual and one typist who prepare wages and carry the sick leave and everything of industrial cleaners, if they are going to be subject to another contract my question was in the previous one and it is still in this one, what happens to those two individuals who I believe are employed by the Gibraltar Development Corporation but I am not very sure, do they disappear, do they move somewhere else or do they move with the contract?

HON K AZOPARDI:

Those people will carry on doing their function. I think the individual that the hon Member is mentioned is now actually physically sitting in the Treasury, if I recall rightly but they are still employed by the same people and they are still doing the same functions. I envisage that they will carry on doing that.

HON J C PEREZ:

Under the new tender?

HON K AZOPARDI:

Yes because all they are doing is doing the logistical function of ensuring that the wages are paid. The management element of the new tender which will impact on this has nothing to do with financial management, it is operational management and so the financial management process will continue as has always been envisaged.

HON J C PEREZ:

But Industrial Cleaners is a company wholly owned by the Gibraltar Government and has the tender for the refuse collection. If that tender now moves to AB Limited and the industrial cleaners have two people preparing their wages, carrying their pension books and everything else, that responsibility is obviously transferred to AB Limited who is the new employer of the people concerned?

HON K AZOPARDI:

The employees of the cleaning companies that are in existence now will have the option to be transferred to AB Limited but that is not the situation with the refuse collection service. The refuse collection service will continue to be done by Industrial Cleaners, the employees will still be Industrial Cleaners employees and what the new contractor is going to be able to do is to show

operational leadership to the company but we are not in a transfer of employees situation as we are with the option that will be given to the other employees in respect of the sweeping of streets contracts.

HON J J BOSSANO:

Mr Chairman, in subhead 10 I take it that although there is no breakdown shown in respect of the companies that had the contracts in the financial year for which there is a forecast outturn, presumably they are continuing to be paid out of that subhead until the new contractor takes over. Can I ask, in respect of Sights Trading Company, is the position that that is being done by the Development Corporation, the street cleaning?

HON K AZOPARDI:

The original preface to the Leader of the Opposition's question is partly yes. In other words, the services being conducted by these companies are all being done except in the case of Sights Trading. Indeed there were a couple of companies whose contract expired in May and they were asked whether they wanted to accept the option of extending their contract until the new contract was awarded and the new operator was in place and those companies accepted. So they are either under their existing contracts or under extended contracts performing the service except for Sights Trading who informed the Government that they were not in a position to be able to accept the extension and as far as I am aware, the arrangement that we entered into was that those people were taken over by the Government on a short-term arrangement until the new contract was in place and they would be passed on to the new contractor. Whether they are physically on a short-term arrangement through the Government or the GDC I cannot tell the hon Member that element of detail but I know we are doing that physically on the ground, as it were, to perform those services.

HON J J BOSSANO:

So, Mr Chairman, presumably if it is GDC eventually there will be a cross payment and if it is not GDC they would be paid wages straight out of the Consolidated Fund, is that right?

HON K AZOPARDI:

Yes, my hon Colleague, the Minister for Tourism, with whom I discussed the arrangements in principle at some stage and who indeed is supervising the former Sights Trading contracts under the Ministry for Tourism, his people at Tourism took responsibility for ensuring that these arrangements were put in place and he tells me that they are GDC employees.

Subhead 10 – Street Cleansing and Associated Services – Contracted Services was agreed to and stood part of the Bill.

Subhead 11 – Other Refuse Services and Disposal

HON J C PEREZ:

Mr Chairman, could we be told whether that sum of money includes the amount that is spent on the disposal of the fly ash too or is this just a contractual obligation towards Intown Developments?

HON K AZOPARDI:

It is just the contractual relation and I think my hon Colleague can elaborate on the other item.

HON LT-COL E M BRITTO:

It does not include the fly ash, that will be found under a different subhead under Head 4, Support Services.

Subhead 11 – Other Refuse Services and Disposal was agreed to and stood part of the Bill.

Subhead 13 – Services provided by Gibraltar Community Projects Ltd

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, only a minor point. Really subheads 13, 14 and 15 should read 12, 13 and 14.

Subhead 12 – Services provided by Gibraltar Community Projects Ltd

HON J J BOSSANO:

Mr Chairman, in the accounts that were tabled of Gibraltar Community Projects up to March 1998 it shows that the operating costs exceeded the amount provided by the Government by £857,000. Is there an element of recovery of the under-funding of March 1998 in either the forecast outturn or the provision for this year?

HON K AZOPARDI:

Not as far as I am aware of unless the Financial and Development Secretary corrects me otherwise.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I think this was dealt with in the financial year 1997/98 by the Government. If we look back at the revenue page 14 where we took back of Gibraltar Community Projects £935,000 from £1 million, I recall off the top of my head, they have been capitalised so in fact that was made good in that year.

HON J J BOSSANO:

Actually the explanation does not make any sense, it makes it worse because how could one take back a loss? The accounts show that they did not have £1 million to give back in 1997/98.

The accounts show that the equity shareholders fund at the end of March was £136,000. I know that that was shown in the accounts then as a clawback of money previously provided but in fact the accounts that have been tabled in this House shows that the money was not there to be taken back.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, what happened was that we reduced the shareholders fund. If one looks at the balance sheet of Gibraltar Community Projects the shareholders fund is simply being reduced, there was no need for us to keep, as we were funding Community Projects from the Consolidated Fund there is no requirement for us to keep £1 million of shareholders fund so we have withdrawn it back into the Consolidated Fund.

HON J J BOSSANO:

I know that that is what I am being told but in the accounts that have been tabled it says, "Operating costs - £4.2 million; and turnover - £3.4 million" and then it explains that the turnover is the amount it receives from the Government and then there is a breakdown of the operating costs given and in the £4.2 million of operating costs, £3.7 million is wages and social insurance. A reduction of capital is not shown there as an operating cost. The information that has been provided suggests that the company at the 31st March did not have £1 million of equity to be reduced, it had £136,000, it had a nominal capital of £1 million but a carried forward loss into the financial year 1998/99. Since we have, in the vote that we are looking at, an amount that was provided which shows a forecast outturn of money paid to the company of £2.6 million which shows, if we look at the figures in the estimate for this year and in the outturn for last year that would be indicative that this amount of money was in fact the Government financing the recurrent running cost of the company, that is what that suggests. It is precisely because in 1997/98 the explanation that we got was that in fact the company did not need the £1 million which is what has just been repeated, I was surprised when we got a copy of the accounts that not only did they not need it they

did not have it either according to these accounts. If they did not have £1 million because the authorised share capital is £1 million and the issued share capital is £1 million on the 31st March 1998 but out of that £1 million, according to the accounts, £863,831 was in fact using part of the share of the clawback share capital to meet the gap between the operating cost of the company and the money the company had received up to the 31st March 1998. My question therefore is given that on the 1st April 1998 Gibraltar Community Projects had a deficit carried forward of £863,831, has any of that deficit been met by either the forecast outturn or the estimate for this year which would not seem to be consistent with the breakdown in the estimates?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, the estimate and the forecast outturn are exactly what has been spent on Community Projects this year so the hon Member is right. I would just need to look into that and come back to him later if I may.

Subhead 12 – Services provided by Gibraltar Community Projects Ltd was agreed to and stood part of the Bill.

Subhead 13 was agreed to and stood part of the Bill.

Subhead 14 – Consumer Protection Services

HON J J BOSSANO:

Mr Chairman, I note that under Consumer Protection Services, I take it that subhead 14(b) Gibraltar Development Corporation Staff Services is in fact the salaries of the staff employed in the Consumer Protection Unit and if that is the case is it that there has been an increase in staff, it goes from £21,000 to £31,000 and then up to £45,000?

HON K AZOPARDI:

There has not been an increase in the staff.

HON J J BOSSANO:

It says staff services.

HON K AZOPARDI:

Yes, that being the case that puzzles me as well I have to say. I will look into that matter.

HON J J BOSSANO:

Is there going to be any changes in this area as a result of the new provision that is being made for which there is a surplus element in the creation of the office of the Ombudsman?

HON K AZOPARDI:

At the moment that is unclear because I had originally thought that it might be possible, indeed, maybe expedient for the Ombudsman structure which really gives a civil rights, consumer protection advisory service to the public, to take charge of the whole umbrella and for this to be merged with the office of the Ombudsman. It has been included here while discussions take place. My own personal view is that that should be the case. I am not sure if it will happen, I have not discussed it with the Ombudsman and he may not share my view. Ultimately because he should feel the structure which is independent of Government, he will have the final say on it and at the moment therefore the final decision has not been taken and it is a matter that I would hope to be able to have a discussion with him at some stage.

HON J J BOSSANO:

Can I say, Mr Chairman, in the light of those comments, that while we accept that it is important to maintain the independence I share entirely the logic of that analysis, it seems that it is a sensible way of proceeding given that it ought to be more cost effective to run the operation like that.

HON K AZOPARDI:

And in that context it might be that the increase is representative of the additional staff that the Ombudsman would require were he to take them all over and it might represent vacancies but I will check it and let the hon Member know.

HON J J BOSSANO:

Does the Minister have any notion of why it is that the outturn is £21,000 instead of £31,000 because even that seems odd?

HON K AZOPARDI:

I think at the beginning of last year there were three people in employment and now there are two.

Subhead 14 – Consumer Protection Services was agreed to and stood part of the Bill.

Head 3 – B – Health

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

Subhead 3 – Other Charges

HON J J BOSSANO:

Mr Chairman, the contribution to Gibraltar Health Authority, perhaps given that the details are in the appendix I can use this subhead, I am not sure that we got an answer on the question of the £1 million projected income which obviously has an impact on this subhead because presumably if the £1 million did not materialise this would have to be £1 million higher.

HON K AZOPARDI:

What £1 million is the hon Member talking about? The £1 million that he debated with the Chief Minister about two hours ago, is that the one he is talking about?

HON J J BOSSANO:

I do not know whether I debated it. In the Gibraltar Health Authority figures the estimated receipts from the GPMS are £17 million instead of £16 million, on page 116, Appendix C. the amount that is being provided in this subhead of £5.1 million is obviously because they expect to collect £1 million more from GPMS, if they were not collecting from GPMS £1 million more that would have to be £6 million instead of £5 million. We are asking on what basis is there a projection of £1 million more given that the outturn up to the 31st March is £16 million which happens to be in line with the estimate a year ago?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Of course, Mr Chairman, if the 1998/99 year there was a change to the social insurance stamp effective from January 1998 so in fact the timing of people paying their stamp there was quite a lag in as actually getting the benefit of that and therefore we predict some of the benefit will come in 1999/2000. In addition to that, we are also anticipating that we will collect more arrears of social insurance on which there are substantial amounts. But the hon Member is perfectly correct that if we do not achieve the £17 million it will obviously mean we will have to make a higher contribution to the Consolidated Fund assuming the expenditure stays the same and that will have to be met by supplementary funding.

HON J J BOSSANO:

In the light of that reply, can I ask, Mr Chairman, where is the money from the increased prescription charges reflected on the receipts of the Health Authority?

HON K AZOPARDI:

I think the hon Member is asking this question because last time in the House of Assembly question and answer session he asked me whether the increase in prescription charges goes to revenue or the Authority. I did answer yes but I have had second thoughts since I answered yes actually because the mechanics of it itself is such that I think that it does not, on reflection, figure in that column but I have not had an opportunity to discuss that with the Chief Executive who has the direct handling of the GPMS arrangements and I want to ask him the particular question as to whether it is revenue or whether there is a set-off arrangement, I think in the mechanics there may be some set-off for it. If the Leader of the Opposition would bear with me I will certainly write to him with that information.

HON J J BOSSANO:

So, in fact, if there is a set-off as would appear to be the case given that it is not reflected on the receipts then it does mean that the supposed savings in the prescription charges are not entirely due to the efficacy of the mechanism and are partly due to the fact that the original cost of prescription charges in the preceding year was when the prescriptions were £1.20 and that in this year the increase of £1.30 has meant a higher set-off and that the figure on the expenditure side is the net amount and that is why there is a £4 million charge, would that not be accurate?

HON K AZOPARDI:

I think the hon Member is very ungenerous with the pharmacy controls that were introduced. I think whatever money has been kicked up by the new charges we estimate could be £100,000 or £200,000 but it would not reflect a descent of the figure by £1 million or £1.5 million which in real terms is what has been achieved. I think the real issue on controls of what has been achieved is the pricing of each individual prescription, that is what has delivered the savings.

HON J J BOSSANO:

Mr Chairman, I am not saying it accounts for the whole, I am saying it accounts for some of it and the impression that was given when the Minister spoke in the general principles of the Bill was that he made no mention of this factor at all and therefore that is why we have been looking for it on the revenue side.

HON K AZOPARDI:

If I made no mention of it it certainly was not intentional. I was cognisant of the fact that I was trying to sweep through the achievements of my department and as there were quite a number I did not want to take the time of the House. *[HON J J BOSSANO: He forgot the negative bits.]* Can I just for the purpose of clarification, given that the Leader of the Opposition was dealing with the Appendix of the Health Authority, can I just point out that there is a slight error in the receipts column of the Health Authority. I would ordinarily have raised that in the Improvement and Development Fund but given that we are here now I think it might be a pertinent moment to do so. There is a column "Contribution from the Improvement and Development Fund - £1.3 million", if we go to the Improvement and Development Fund the real figure is £985,000 which is reflected and that sum in an expenditure sense. If we then go to capital expenditure, subheads 38, 39 and 40 I think the error lies in the fact that this has not been corrected from the original version, the Improvement and Development Fund was the corrected version and so the figures should be instead of £560,000, £500,000 and £70,000 should be £425,000, £325,000 and £35,000 which would then give a different contribution from the Improvement and Development Fund and obviously a different total and the total would be £26,409,000.

HON J J BOSSANO:

Presumably this would appear in the approved copy of the estimates.

HON K AZOPARDI:

Well, I hope so, that is why I am mentioning it so that account can be taken of those matters.

Subhead 3 – Other Charges was agreed to and stood part of the Bill.

HEAD 4 – GOVERNMENT SERVICES AND SPORTS

Head 4 - A - Support Services

Subhead 1 – Personal Emoluments

HON J C PEREZ:

Mr Chairman, just a small one here. There has been a move of personnel from the Infrastructure, Engineering and Design where it says General in Personal Emoluments. If we look at the figure provided for both salaries and we take into account there has been a decrease in one of minus seven and an increase in the other of eight the difference between the forecast outturn this year and the provision is £122,000 for one and £83,000 for the other less it would seem to me that that figure should be more equal although I understand that there is one extra body which is an extra Executive Officer which must have come from somewhere else not from the Infrastructure.

HON LT-COL E M BRITTO:

Perhaps the hon Member would clarify where his figures come from. My figures for the combined administration and infrastructure are an estimate for last year of £542,000, an outturn of £543,000 - £1,000 more – and an estimate for this year of £588,000 which is £45, 000 more.

HON J C PEREZ:

My page 42 under subhead 1(e) salaries, infrastructure, engineering and design has a forecast outturn of £410,000 and an estimate of £327,000. Is the Minister following me now?

HON LT-COL E M BRITTO:

I am following him totally.

HON J C PEREZ:

What I am saying is that the figure of £320,000 estimated and the figure of £184,000 estimated in salaries general under subhead 1(a) the decrease in one figure should be more or less equivalent to the increase in the top figure since it has to do with the number of people transferring from one department to the other. The difference between the forecast outturn figure and the estimate figure for the infrastructure is £83,000 less whilst the increase on the top is £122,000. I understand that on top of the seven that have moved there is an extra Executive Officer but I wonder whether the EO accounts for £42,000 extra.

HON LT-COL E M BRITTO:

The figures that I gave him was for the total columns of those two departments. *[HON J C PEREZ: But I am talking about salaries.]* if we take everything into account, the differences are much more reasonable.

HON J J BOSSANO:

Mr Chairman, the salaries are a reflection of the numbers of people in post. There can be other changes in other elements which fluctuate like overtime or whatever but the salaries are finite, they are fixed. If there are more salaries there must be more people in one subhead and less in another.

HON LT-COL E M BRITTO:

There is a net increase of one body, if we take both sections into account. That accounts for the estimate which is estimated on those figures. The forecast outturn is accurate on the figures that there are and the estimate is what was estimated last year, it is a bookkeeping exercise. There is not an extra EO, there is a net increase of one body; there is one extra EO, there is one extra Messenger and there is one extra Quantity Surveyor and there is minus a technical grade and minus a telephonist.

HON J C PEREZ:

If the Minister would care to turn to page 38 he will see that the net increase between the total figure of the two sections has to do with an extra EO in the total amount of the two sections.

HON LT-COL E M BRITTO:

No, Mr Chairman, the hon Member is wrong.

HON J C PEREZ:

It has got Executive Officer, there was one in Support Services and now there are three, an Executive Officer here there was one and there is nil so if the one goes up and there was one last year it would make two but there is an extra one that makes three and that is the extra body shown.

HON LT-COL E M BRITTO:

No, Mr Chairman, the hon Member is wrong. He is right as far as he goes but if he also looks at the Messenger he will find that it is a new post and if he looks at the Quantity Surveyor he will also find that it is a new post, so there are three new bodies but against that increase of three there have been two losses, the Technical Grade has been lost and the Telephonist has been lost. So there is an increase of three and a decrease of two which gives him his net increase of one.

Subhead 1 – Personal Emoluments was agreed to and stood part of the Bill.

Subhead 2 – Industrial Wages

HON J C PEREZ:

Mr Chairman, would it be possible for the Minister now that the Electricity Section and the Workshops and Garages are shown separately to show also separately the industrials so that we know how many people are employed in the Electricity Section and how many people are employed in the Garage and Workshops?

HON LT-COL E M BRITTO:

I would presume there is no technical difficulty in doing that, yes I do not see why it should not happen.

Subhead 2 – Industrial Wages was agreed to and stood part of the Bill.

Subhead 3 – Other Charges

HON J C PEREZ:

Mr Chairman, under (c) Telephone Service it seems to me that with a forecast outturn of £20,000 that an increase to £36,000 is a bit too much unless there are circumstances which need to be explained.

HON LT-COL E M BRITTO:

Yes, Mr Chairman, of course there are, of course it is a substantial increase and there is a very easy explanation. In this year the IT Services Unit have been absorbed into Support Services in the move into Joshua Hassan House and the telephone account of the IT Services Unit was previously shown

separately and came under somebody else and it is this year included under Support Services hence the increase.

Subhead 3 – Other Charges was agreed to and stood part of the Bill.

Subheads 4 and 5 were agreed to and stood part of the Bill.

Subhead 6 – Government Web Site

HON J J BOSSANO:

Mr Chairman, the £15,000 is what is being paid to somebody on an annual contract because it was last year and this year?

HON LT-COL E M BRITTO:

Yes, Mr Chairman, these are the expenses of initially setting up the web site, the consultancy, the security side of it, the actual setting up of the web site. This year we have shown the same amount to reflect the running costs of the web site. This is a figure that is a little bit of a guesstimate and may be subject to adjustment next year. It is the same amount but for a different purpose last year to this year. The web site is now almost finished, there are still a little bit of expense in the setting up of it and from now on it will be running costs.

HON J J BOSSANO:

If what we are voting is £15,000 for the running costs on what is that based? I know he said it was a bit of a guesstimate but what is it that we are actually paying?

HON LT-COL E M BRITTO:

It is not salaries or wages, it is not personal emoluments of any kind. It is things like software, hardware for that matter, additional material that we might import into the web site, licence fees that we may have to pay. It is purely the technical content of the stuff

that appears on the screen but there is no personal emoluments involved in this.

HON J J BOSSANO:

Is there a fee attached to having the web site?

HON LT-COL E M BRITTO:

No, there is no fee attached in the sense that one does not pay a subscription to anybody. The internet works in such a way that anybody, the Leader of the Opposition, myself or anybody else can set up his own personal or corporate or, as in this case, governmental web site so there is no fee as such. But once one has the blank page there it depends what one wants to print on the blank page; if one wants to put a song one may have to pay royalties; if one wants to show somebody's picture one might need his permission or buy the picture to show it, that sort of thing.

Subhead 6 – Government Web Site was agreed to and stood part of the Bill.

Subhead 7 was agreed to and stood part of the Bill.

Subhead 8 – Compensation in lieu of Water Tariff Increase

HON J C PEREZ:

Mr Chairman, is the fluctuating element in the figures in the estimates on the outcome to do with the fact that the arrangement is one where Lyonnaise is paid depending on the supply of cubic metres of water to the population or is this done by units consumed and that is why there is a fluctuating element or is it just a negotiated price and is covered on an across the board basis?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, the 1997/98 figures reflects a part year. I think the agreement came into effect in June or July so it only reflects nine months. The £840,000 was Lyonnaise's estimate of how it would work and it actually turned out to be less and that is their estimate for the next year. It is based on the actual amount of water they supply.

HON J C PEREZ:

But is it still the same contract as the original one? There has been no change in the arrangement, it is the same arrangement but there has been a lower calculation in 1997/98 which has proved to be higher?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

There has been no change in the arrangement, 1997/98 represents three-quarters of a year because what we did was we introduced a new arrangement which substituted for the price of water in the original contract.

HON J C PEREZ:

Is the arrangement one where Lyonnaise calculates this depending on the calculation of water supply either in terms of units or in terms of cubic metres of water and the Government pay Lyonnaise a compensation, for example, at a price per cubic metre supplied or a price per unit consumed by consumers?

HON LT-COL E M BRITTO:

As the hon Member knows the contract allows for the price of water to go up and as the price of water has not gone up then Lyonnaise is consequently out of pocket. So based on the amount of water supplied the calculation is directly based on consumption of water with maybe one or two other factors.

HON J C PEREZ:

Did the Government, during the budget debate, not say to the Leader of the Opposition that the fact that there was a dividend payment by Lyonnaise this year was the result of a change in this contract? Am I not right in saying that?

HON CHIEF MINISTER:

The fact of the matter is that as the company has only just started collecting the compensation in lieu of tariff rises, it is now making a small profit from which we are getting, I think Government's shareholding is a third.

Subhead 8 – Compensation in lieu of Water Tariff Increase was agreed to and stood part of the Bill.

Subhead 9 – Disposal of Fly Ash

HON J C PEREZ:

Mr Chairman, I presume that the 1998/99 estimate took account of the backlog of fly ash that was here. There seems to be a great disparity between the estimate and the forecast outturn and the estimate for next year certainly gives a more realistic one. Has this got to do with the operation of the incinerator?

HON LT-COL E M BRITTO:

The hon Member is right, obviously there is a great disparity, nothing to do with the actual operation of the incinerator per se. I think I am right in saying that 1997/98 was the first year in which we actually paid for disposal of ash as opposed to storing it in tunnels as had been done during the hon Member's time so that first figure was an actual. The £110,000 was an estimate because we did not really know, and that £55,000 got rid of everything and we expected to have to get rid of more in the following year. As it turned out our figures were way out and we only needed to dispose of £44,000 worth last year. Having said that, the figures

for this year include, as well as the ash it now includes also disposal of large items, I think it is mainly mattresses which the incinerator under the new environmental legislation will not dispose of. So that is why it came down to £45,000 it should theoretically be £45,000 or £50,000 this year but there is an extra element because of the mattresses.

Subhead 9 – Disposal of Fly Ash was agreed to and stood part of the Bill.

Head 4 – B – Electricity

Subheads 1 to 4 were agreed to and stood part of the Bill.

Subhead 5 – Generation

HON J C PEREZ:

Perhaps I can raise on this one the issue that was raised with the Minister in respect of subheads 5 and 10 which is the difference between the contractual obligation of OESCO and the fuel being used in Waterport Generating Station.

HON LT-COL E M BRITTO:

The factors that were pointed out to us by Opposition Members cannot be explained by one single factor. But let me start off from the point which I suspect is of greatest interest to hon Members and that is that there has been no change to the OESCO contract, let us get that absolutely clear. The liability for the contracted payment remains the same. The other factors that one has to take into account is the fluctuating FCA where the tendency has been dropping. The third factor that one has to take into account is that the estimate, and this year is no exception, is normally based – when I am talking of the estimate I am talking about subhead 9 now – the estimate on the payment to OESCO is based on the contract price. In reality what has happened over the last two years is that OESCO has supplied more electricity than that under which it was contracted. So one has to see the reduction in the

pattern in the OESCO side arising from both a forecast in the reduction of quantity of electricity to be purchased and a reduction in the FCA charges, that is why it is coming down. The odds are that that estimate of OESCO might turn out to be higher if this year we buy more again. In respect of subhead 5(b) the actual fuel, the relatively static figure there reflects a forecast of increased generation at Waterport coupled to a reduction in the fuel price.

HON J C PEREZ:

Could the Minister perhaps confirm the information which is at my disposal that there has been another design problem with the engines at Waterport and that there might be a possibility of having to change, I think it is a crankshaft as a result of one of the pistons having come out which is when we were in office one of the pistons came out of one of the engines by the side and could the Minister, if he knows, tell us whether the amount of electricity taken from OESCO has exceeded the contractual amount and we have taken advantage of the lower tariff of electricity from OESCO because I believe after the contracted amount the price falls if we take more electricity. Has that happened in the last year?

HON LT-COL E M BRITTO:

Yes, Mr Chairman, as I indicated in my previous answer that is exactly why there has been a creeping up of the figures in the OESCO amount because we have taken more than the contracted figure. To come back to the first part of the question, I wish I could answer in Spanish but I would say to him something about, “Hearing bells ringing and not quite knowing where the sound was coming from”. Coming back to the first part of the question I would not call it a design fault but basically I think some cracks were found on the heads of the pistons. This is a fault that has been identified in generating stations and we were asked to look and see whether there were any but when we had done the overhaul on that particular engine, we have found more than the expected number of cracks. So basically yes, there is going to be extra expenditure which is not reflected directly because this has

come to light very recently, it is not reflected directly in the estimates as a separate head but it is intended to meet it from within the present expenditure and the amount has not been quantified because we know it to be on one engine but as other engines are overhauled the same problem might arise and we have asked the company to say why is it that we have a higher incidence of faults in our pistons than others.

HON J C PEREZ:

Is the Minister in a position to state whether Mirrlees Blackstone is going to pay part of the cost of the change?

HON LT-COL E M BRITTO:

Yes, in the prices negotiated so far there has been a substantial reduction from the original asking price as a subsidy from Mirrlees Blackstone towards the problem.

HON J J BOSSANO:

Mr Chairman, the Minister says that the figure we are voting for fuel this year is, in fact, a combination of higher consumption on lower prices because he is expected to generate more electricity from the Government production and presumably have to buy less. Can he give us an indication of what we are talking about, is it 10 per cent more or 20 per cent more?

HON LT-COL E M BRITTO:

No, I cannot give him an indication of the percentage. I thought in fact his question might be slightly different but in order to explain the situation further it seems to me that the logic that is being used is that we are estimating the contract figure in subhead 10 and we are estimating what the figure should be for generation in subhead 5(b) in order to meet demand whereas practices show that the figure in subhead 10 tends to be increased because – in the last three years anyway – more electricity is purchased from OESCO and the figure in subhead 5(b) will tend to come down

because the fuel cost remains low. That is the way it has been explained to me but it turns out as it turns out, depending on what happens during the year.

HON J J BOSSANO:

He is right in thinking that what we are doing is looking at the two subheads and trying to see what is the relativity between the two figures given that one has come down quite dramatically from £3.8 million in 1997/98 to £3 million estimated for the next 12 months whereas if he looks at the fuel he will see there is hardly any difference between 1997/98, the estimate for 1998/99, the outturn for 1998/99 and the budget for this year. Between 1997/98 and next year there is a difference of £49,000 over the 24 months in a budget of £1.6 million, that is not a significant change. On the other side, in subhead 9 the change is from £3.8 million two years ago to £3 million in the next 12 months, that would indicate given the fact that he is talking about increased billing of units running at 3 per cent, well if in fact we look at the 1997/98 situation and the 1999/2000 situation that would be indicative of quite a significant shift in the production costs of electricity from the purchase to the owned production, that is what that suggests.

HON LT-COL E M BRITTO:

I think there is an additional factor that the cost of generation in Waterport is less than in OESCO. But all I can say to the hon Member is that I took note of his comments when they were made the last time which were very much on what he has said just now and I have asked for explanations, I have given those explanations on the fundamental philosophy, I have sight here on the way they are calculated which is complex formulas and a lot of detail which, quite honestly, I have not gone into and I have no intention of going into. I have confidence that the professional people in the electricity department presumably are getting their sums right. I have asked them to check whether they have got their sums right and when they come back to me and they tell me

that they have not I shall inform the hon Member. But at the moment I am told that those figures are a reflection on what has happened and what is expected to happen and there is nothing else I can add to that.

HON J J BOSSANO:

Mr Chairman, with all due respect to the Minister, obviously the people who put the figures in the estimates put the figures in the estimates that they believe are the correct figures otherwise they would not put them there in the first place, that is true of every estimate in every budget. The purpose of the House considering the estimates is in fact to seek further information on the sums of money we are voting. Where we have a shift in the purchase of electricity from £3.8 million two years ago to £3 million this year frankly I do not think is enough to say, "The guys in the Generating Station who are technical and produce very complex formula and they are satisfied that the complex formula works." Maybe he would like to pass me the complex formula and maybe I can have a look at the complex formula if he does not want to look at it. But certainly I would like to know, for example, how much electricity in the estimate is being obtained by the purchase in subhead 9 and how much is being produced on the figures that he has given us because he has volunteered information in his contribution to this budget of the amount of electricity being generated. I would like to know how much is being generated from one source or the other to relate it to the money that is being voted.

HON LT-COL E M BRITTO:

The total amount of units generated by both stations is 116.31 million units.

HON J J BOSSANO:

Mr Chairman, that is in the forecast outturn, am I correct?

HON LT-COL E M BRITTO:

Yes, Mr Chairman, that is correct. Of that figure of 116.31 OESCO generated 64.27 million but used up for its own use 7.07 million leaving a balance of 57.20 million. Waterport generated 52.04 million which added to the 64.27 million gives us the 116.31 million.

HON J J BOSSANO:

So in fact the £3.2 million in the forecast outturn is the cost of purchasing the 57 million units and therefore presumably, since we are being asked to vote £200,000 less it is because it is not expected to have to buy 57 million in the next 12 months.

HON LT-COL E M BRITTO:

That is what I said in my original answer, Mr Chairman, the reduced figure is due to a reduction in the purchase of electricity which arises both from a forecast in the reduction of the quantity of electricity we purchased from OESCO and a reduction in the FCA charges payable to OESCO, that is why the forecast is lower.

HON J C PEREZ:

If more work than is projected is scheduled of the generators at Waterport and the work projected is in line more or less with what there is every year given the materials but as a result of changing the pistons et cetera, if more work is expected to be generated because the overhauls might take longer as a result of that then we would expect next year to get a reduction in the outturn of the fuel price from Waterport, that would be the case I presume?

HON LT-COL E M BRITTO:

With the greatest of respect to the hon Member, I am neither the City Electrical Engineer nor an expert in this field. *[HON J C PEREZ: He sounded like him yesterday in his contribution.]* Having said that I think I can still hold my own and give the information that the hon Member wants. To start with I think his question is based on false premise. If there is extra work generated because of the faults that may be found, firstly we are not intending to strip the engines to look for the fault, it will be done through an overhaul and then if the fault is identified I have already indicated that under I&D we expect to use funds available there to provide the materials and presumably the cost involved. But even if that does happen and the engine is out of commission for longer then the amount of units generated will have to remain the same, OESCO will have to supply more if the generating station is applying less. But these figures are, I say again, based on the estimates of the contract for OESCO as per the contract and the other one is based on Waterport on increased generation.

Subhead 5 – Generation was agreed to and stood part of the Bill.

Subhead 6 was agreed to and stood part of the Bill.

Subhead 7 – Electro-technical

HON J J BOSSANO:

On Electro-technical on the materials side, subhead 7(a) there is a drop in the outturn where they underspent £30,000 compared to the amount provided in last year's estimate and the estimate now is £110,000. Has the Minister got an explanation for that change?

HON LT-COL E M BRITTO:

It is a combination of two factors, I understand, Mr Chairman. Firstly, less work was done because there was more involvement in the last year under subhead 11 – commercial projects where the hon Member will see a substantial figure of work recovered

from the work under commercial projects, that accounts for the drop in the expenditure. The increase in the expenditure, hon Members may remember in my contribution I referred to a programme of updating and modernisation of substations and again they will see reference to that in the I&D.

Subhead 7 – Electro-technical was agreed to and stood part of the Bill.

Subheads 8 to 10 were agreed to and stood part of the Bill.

Subhead 11 – Commercial Projects

HON J J BOSSANO:

In the outturn in commercial projects, Mr Chairman, is this something that is recovered from developers?

HON LT-COL E M BRITTO:

Yes, Mr Chairman, the figure of £5,000 is a token figure which I understand is put in there every year as a token figure because it is never known how much is recoverable. The amount is the amount as the hon Member says, that is the cost of the commercial project and is fully recoverable from the commercial development.

Subhead 11 – Commercial Projects was agreed to and stood part of the Bill.

Head 4 – C – Fire Service

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

Subhead 4 – Operational Expenses

HON J J BOSSANO:

Mr Chairman, subhead 4(g), £20,000 this year, it was £5,000 last year and then it was not spent. Is this the system that we have heard about which is going to be provided for different essential services?

HON LT-COL E M BRITTO:

Yes, it is, the TETRA system which will be used by all the emergency services.

HON J J BOSSANO:

So I take it that there are similar provisions in other subheads?

HON LT-COL E M BRITTO:

That is correct, Mr Chairman.

Subhead 4 – Operational Expenses was agreed to and stood part of the Bill.

Head 4 – D – Post Office

Subhead 1 – Personal Emoluments

HON J C PEREZ:

Mr Chairman, perhaps it is the only opportunity I have of raising this matter and I would like to raise it here given that it has to do with the administrative staff. When the Minister said that the staff might have to move to the Haven for repairs to be effected, were we talking about the administrative staff only or the administrative

staff and the sorters, were the counters at any stage considered being moved so that repairs could be made, the whole thing would be moved?

HON LT-COL E M BRITTO:

Mr Chairman, the reality is that this is very much at the conceptual stage and will be looked at because the exercise has not started yet, needs to be looked at by both the Post Office and by the technical people from Support Services. Off the top of my head I would hazard a guess that it would mean the move of the counters staff and the administration department not necessarily at the same time. I have my doubts about the postmen and the sorting office, whether it would be even possible to move them or whether it would be easier to relocate them from within the building. The honest answer is that it is too early to say anything at this stage, Mr Chairman.

Subhead 1 – Personal Emoluments was agreed to and stood part of the Bill.

Subheads 2 to 4 were agreed to and stood part of the Bill.

Subhead 5 – Outgoing Mail and Bulk Mailing

HON J C PEREZ:

Mr Chairman, is it possible to have, at some stage, a breakdown of what amount of money is outgoing mail and what amount of money is bulk mailing and a breakdown for previous years so that we compare and see whether there has been an increase in bulk mailing or not?

HON LT-COL E M BRITTO:

I can give the hon Member the figures for the outturn of last year now but I would need to follow up the information for other years. Of the £400,000, £260,000 is bulk mailing:

HON J J BOSSANO:

Can the Minister confirm that the amount provided presumably is on the same basis? The £400,000 for this year assumes £260,000 for bulk mailing again?

HON LT-COL E M BRITTO:

Yes, once again this is a figure that is difficult to project because firstly, we do not know how much business there is going to be and, secondly we do not know whether the payments for it will come within the current financial year. I understand it is provided on the same basis of the same sort of volume.

Subhead 5 – Outgoing Mail and Bulk Mailing was agreed to and stood part of the Bill.

Subheads 6 to 8 were agreed to and stood part of the Bill.

Head 4 – E – Broadcasting

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

Subhead 3 – Other Charges

HON J C PEREZ:

Mr Chairman, although I know that it is a subvention but GBC's subvention was always primarily geared up for meeting the cost of the salaries. I presume that there has to be a net profit projection in over the cost of employing people if the subvention has remained at that level. That is to say, that if they are going to employ five people the intention is that the other income would absorb the cost of those five extra people because if not the subvention would be shown here to be higher to take into account the four or five extra bodies that they have taken on.

HON LT-COL E M BRITTO:

Mr Chairman, I think one has to look at the relaunched GBC in a much wider viewpoint than that. The Government have asked GBC to become more commercial. We have asked it to look at a reducing subvention somewhere down the line. We have asked it to restrain the subvention this year so although yes, the business plan that the board has produced does include cost for the extra bodies but it also takes into account the new opportunities being offered for increased advertising, increased revenue and that is why there is no increased subvention.

HON J C PEREZ:

Given that the subvention is in line with last year and that the number of licences has not increased and the projection of GBC is that it is the same income from the number of licences, the only new source of income that they are expecting to receive is increased advertising as part of the relaunch. What I am asking is that if GBC in their projections are expecting to cover the extra cost of employing people in the first year, if the increased income would cover the cost of the increased cost of employing people? That is what I am asking.

HON LT-COL E M BRITTO:

The hon Member obviously misunderstood my reply. I intended to answer exactly that point in what I said before. *[HON J C PEREZ: He did not.]* Well, let me say it again in different words. Precisely because we are keeping the subvention the same, precisely because they have increased costs, then obviously they envisage increased revenue not just from advertising but also from sponsored programmes and from other opportunities that will arise and the bottom line is that they expect the bottom line to be neutral. They are not expecting to make a loss.

HON J J BOSSANO:

Mr Chairman, in discussing the profitability of the new operation I note that in the accounts that have been tabled at this meeting of the House GBC still retained a net book value of decoders which presumably is now scrap.

HON CHIEF MINISTER:

The last we heard they were not scrap, indeed they had an interested party to purchase them. [HON J C PEREZ: Botswana?] Well, we are not racist about who we sell things to. If it were Botswana it would not matter, what matters is the colour of their money. I cannot remember the exact amount but it was a substantial amount, it was not a nominal amount.

HON J J BOSSANO:

I do not know whether the balance sheet value of the decoders are the decoders that have not been distributed or is it that now that there is no longer a need for a decoder because there is no longer BBC Prime is GBC expecting licence holders to go back and give them back all the decoders so that they can sell them, is that the situation?

HON CHIEF MINISTER:

They have a large stock of them, the hon Member may have seen it if he has visited GBC, stacked up in some remote corridor and I think they are also hoping to persuade subscribers to return them, yes, so it is really a combination of both.

Subhead 3 – Other Charges was agreed to and stood part of the Bill.

The House recessed at 7.17 pm.

The House resumed at 7.30 pm.

Head 4 – F – Sports

Subhead 1 – Personal Emoluments

HON J J BOSSANO:

Mr Chairman, given the plans that have been announced in the general principles of the Bill by the Government on additional facilities, does it have any manning implications?

HON LT-COL E M BRITTO:

The Government are, as I have announced, intending to go down the path of expanding considerably the sports facilities but it is expected that the full cost of this financial year will be taken up in the development side and the provision of the facilities. It is unlikely that there will be, in fact I think highly improbable that there will be personal emolument implications in this financial year.

HON J J BOSSANO:

But eventually it would presumably?

HON LT-COL E M BRITTO:

Yes but there is no provision here for that if that is what the hon Member wants.

Subhead 1 – Personal Emoluments was agreed to and stood part of the Bill.

Subheads 2 and 3 were agreed to and stood part of the Bill.

Subhead 4 – Operational Expenses

HON MISS M I MONTEGRIFFO:

Can the Minister say what the £10,000 is in relation to Ancillary Sports Facilities?

HON LT-COL E M BRITTO:

This is a new item as hon Members will note and this is for the upkeep, cleaning and maintenance of the following facilities – Hargraves, the South Barracks tennis courts, the Mount tennis court, the Queensway tennis courts and the USOC playing area.

Subhead 4 – Operational Expenses was agreed to and stood part of the Bill.

Subheads 5 to 7 were agreed to and stood part of the Bill.

HEAD 5 – SOCIAL AFFAIRS

Head 5 – A – Social Security

Subhead 1 – Personal Emoluments

HON J L BALDACHINO:

May I ask seeing there is only one extra AO in the complement how is it that the estimate for 1999/2000 is £88,000 more than the forecast outturn?

HON H CORBY:

There is now a Senior Officer who used to be an SEO, and an Executive Officer was recruited for the Key and Anchor and there is an additional AO.

HON J L BALDACHINO:

If we look at the Social Security establishment on page 50 it shows only one change which is an AO. On page 50 the complement now is 36 and last year it was 35 but the difference is in one AO yet the estimate is £88,000 more.

HON CHIEF MINISTER:

The explanation is that there were officers provided for in last year's estimate which were not in post during the last financial year. Am I addressing the right point?

HON J J BOSSANO:

The Chief Minister has addressed the right point except that the provision last year was £414,000 which is not indicative that the provision was made at the time of the estimates. If £414,000 was the provision for 35 officers in the complement in the last financial year then £470,000 seems a big difference for one more AO.

HON CHIEF MINISTER:

No financial provision was made last year for posts that were vacant and there are quite a lot of them. There are, for example, even as we speak, there is an SEO post vacant at the moment; there is one AO post vacant and there are two inspectors posts vacant and those are provided for in this year's estimate but not provided for in last year's estimate.

Subhead 1 – Personal Emoluments was agreed to and stood part of the Bill.

Subheads 2 to 4 were agreed to and stood part of the Bill.

Subhead 5 – Workers Hostels: Services by Gibraltar Community Projects Ltd

HON J L BALDACHINO:

Under (a) wages if we look at the estimate in 1998/99 which was £171,000 and the forecast outturn was £165,000 and it is now being estimated at £145,000, can we have an explanation why they intend to spend less and if we compare that with the Devil's Tower one which was £111,000 in 1998/99 estimate and the forecast outturn was £95,000 yet they are estimating for 1999/2000 £114,000, is it that there are people moving from one hostel to another?

HON CHIEF MINISTER:

The hon Members I know are aware that this is a service provided by Community Projects and what they do is that they provide to us at the start of the year a calculation of the wage cost that they expect to incur in providing the service. I could give the hon Member a breakdown of both of those figures but what I cannot do is compare it to last year because we have not got it here. I suspect that it has something to do with the fact that the labour force of Community Projects is gradually falling and that they therefore distribute their resources amongst all their various functions on a decreasing manpower basis. How they deploy the manpower resources amongst their various responsibilities is a matter that we leave up to them. What I cannot do is answer the hon Member's question about what the exact reason is, why this year they claim that they need less manpower than last year.

Mr Chairman, the answer has just been handed to me. The explanation is that there are in fact less employees required at Buena Vista than at Casemates because it is smaller in size and I suspect more coherent in its structure and therefore there are three bodies less; there are 14 as opposed to 17. One

clerk has been redeployed; one labourer has been redeployed and one cleaner has been redeployed so the hon Member's assumption was correct.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, if I could come back to the Leader of the Opposition's question about Community Projects. In fact what happened was in two years we actually reduced the turnover of Community Projects, all the turnover is equivalent to the receipts they received from the Government. In fact we actually reduced that to bring in the £935,000 to retain that in the Consolidated Fund which effectively meant they incurred a deficit in that year which was eaten up against their share capital and so there is no deficit to the fund in future.

HON J J BOSSANO:

I am afraid I am not able to follow the explanation.

HON CHIEF MINISTER:

Mr Chairman, when we formed Community Projects Ltd our initial notion was to capitalise them and allow them to operate at arms length, so to speak and therefore £1 million went across and was paid out of share capital. We then changed our minds as to how Community Projects was going to operate and that it was not going to run its own financial operation, it was not going to invoice Government, Government were simply going to indemnify it in respect of all its costs. So we wanted £1 million back but company law does not allow one just to reduce share capital once it has been subscribed and paid out, one has to go to the court and petition the court to reduce share capital. So we looked around for a mechanism to get that £1 million that had already been subscribed in share capital back given that we were changing the method of their operation. The method that we agreed on was to under-fund them in terms of their operating costs one year by that amount of £900,000 so that they would make that loss – it is not that we under-funded them, they had the

£900,000 and we said to them, "For one year use that £900,000 for your operating costs" and the Government saved £900,000 that one would otherwise have had to pay to Community Projects in terms of operating costs. So in other words we were just working off, so to speak, the £900,000 share capital in company operating expenses – labour, materials and things of that sort and when they used that then we kicked in with Consolidated Fund subventions of the sort that we are voting on now.

HON J J BOSSANO:

Mr Chairman, that sounds logical except that it does not seem to fit the facts that we had been provided in the House previously because in the estimates last year on page 11 we have a figure that says "£935,000 recovery of Community Projects expenditure" which went into the Consolidated Fund and I asked at the time for an explanation and I was told this was precisely the recovery of money. The recovery of money cannot be the under-funding of expenditure because one appears on the revenue side and the other one appears on the expenditure side. The explanation that the Chief Minister has given me is not consistent with the information in the estimates tabled in the House a year ago although I can understand the logic of what he is saying but it does not fit. Mr Chairman, I think in fact in the estimates of last year on page 11 the money recovered from Community Projects was shown as an addition to the reserves in the same way as the balances in the dissolution of special funds and in the transfer of the Savings Bank surplus, they are all shown together on the same page and consequently, in fact, I remember asking specifically about this and I was told that it was because they had decided that the company did not need £1 million of funding, that the money had been recovered.

HON CHIEF MINISTER:

I will have this checked out for him but I suspect that what happened was that the Government had in fact funded the whole of Community Projects expenditure that year and £900,000 worth or thereabouts was reversed with instructions that they should

replace it with their share capital so that there is revenue back to the Government in an accounting sense although, of course, the cash never left, Government did not send Community Projects a cheque for £1 million share capital, it was bookkeeping. So if we look at page 14 of the estimates booklet which he has referred to and it shows that in 1997/98 we received from Community Projects into the Consolidated Fund £935,000, there must be a refund of money that had previously been paid out which they were then told to take out of their share capital and pay back the Government subvention so to speak. I suspect that that is what happened but I will certainly have that point looked at and come back to the hon Member on it.

HON J J BOSSANO:

Mr Chairman, except that the Chief Minister has tabled accounts in this House in this meeting dated the 31st March 1998 and in those accounts the £935,000 payment does not appear.

HON CHIEF MINISTER:

The arrangement that the auditors have approved is that that is reflected in a reduction in the turnover. If we look at the profit and loss account there is a reduced turnover there below operating costs which the hon Member will see is strikingly similar or near enough to that figure resulting in an operating loss of £916,464.

HON J J BOSSANO:

I do not know whether the Chief Minister did not hear me when I spoke earlier. All he is telling me is what I told the Financial and Development Secretary about an hour ago, that is the first question I asked. I pointed out that the accounts that had been tabled in this House showed, in the profit and loss account, a loss of £863,000 and when we came to vote this year's money my original question which the Financial and Development Secretary is now trying to answer is precisely what the Chief Minister has just quoted to me. I know that, I actually asked are we voting money this year to cover the loss for that year and the answer

was, "No, we are not". It seems to me, Mr Chairman, that if the accounts of the company on the 31st March show that the operating costs are in excess of the receipts from the Government then the expenditure of the Government must necessarily match the receipts of the company. I do not see how else it can be. The two things must match. Therefore either the money must be moving from the company to the Government and then it appears as a minus in the company and a plus in the Government or the money must be moving from the Government to the company in which case it appears as a minus here and a plus there. I would have thought that if, in fact, the money was being recovered by under-funding then it would be reflected on the expenditure side of the 1998/99 estimates and therefore I would have expected that that would be reflected in the final figure. If that is the explanation then it is not the explanation we have had so far.

HON CHIEF MINISTER:

Mr Chairman, the hon Member will notice that the accounts of Community Projects that have been tabled are not the accounts for a 12 months period, they are the accounts from the 20th August 1996 to the 31st March 1998. The Consolidated Fund had paid, although not necessarily dispersed but in accounting terms we had voted £1 million for the share capital of the company. The Government then entrusts work to Community Projects and they incur costs which we would normally pay them for. Because we wanted the £1 million back – I do not think it was quite £1 million by then – but because we wanted what was left, £900,000 back, what we said to them was, "The Consolidated Fund is not going to fund your £4,266,427 worth of costs. We are going to fund, from the Consolidated Fund less" because all this was done at the financial year end and the Consolidated Fund had already dispersed the monies, it was a bookkeeping reversal of entry. In other words, there was then £935,000 although I cannot tell the hon Member how it is exactly £935,000 but subject to that figure there was then a position in the Consolidated Fund where, in effect, Gibraltar Community Projects Ltd was returning £935,000 to the Government which the Government placed in the Consolidated Fund and it appears on page 14 there as an item of

revenue but how is that revenue generated? It is generated by the company returning that money to the Government in the form of a return of a subvention because it was agreed between the Government and the company that £935,000 of that year's operating costs would not be funded by the Government from the Consolidated Fund but rather would be defrayed by the company from its internal resources. What were those internal resources? The share capital £1 million that the Government had, prior to that, already made available to the company within the Treasury. I think that that addresses the problem of chronology. These accounts up to the 31st March 1998, the money was received by the Government from Community Projects in the year ended 31st March 1998. I do not follow the hon Member's point, why is he suggesting that there is a mismatch in chronology?

HON J J BOSSANO:

If we have got audited accounts for the 31st March 1998 and a receipt by the Government of £935,000 there must be, I would have thought in the estimates of the company, a payment to the Government and it is not there.

HON CHIEF MINISTER:

The hon Member is theoretically technically correct in that.....
[HON J J BOSSANO: *Technically.*] Well, yes, in the sense that if the company is making a payment to, in this case the Government, it ought to presumably, I am not an accountant myself but I would have thought it logical that it should appear somewhere in the profit and loss account. It does appear because it appears as operating costs so that figure of operating costs under the heading "turnover", that figure of £4,266,727 in effect is the expenditure that relates to that £900,000-odd that went out to the Government. If the hon Member turns over the page of the accounts to page 4, the balance sheet, in the capital and reserves section he will see there how the loss has been set off against the £1 million share capital. [HON J J BOSSANO: £863,000.] £863,000, I do not know how it gets from £863,000 to £935,000 but there must be an explanation for that as well. So the point that

the hon Member is making is, all right accepting that that is how it all works why is the payment out not reflected? Mr Chairman, I can only suppose that these are not cash books, this is not a cash book which shows out the payments made, this is a statement of the profit and loss account which shows the company's operating revenue and operating costs. *[HON J J BOSSANO: They are audited accounts.]* Yes but they are audited accounts of the company's operating costs and operating revenue. The payment back to the Government was no more than a return to the Government of monies that the Government sent to the company and said, "No, give them back to me" and the result of the Government saying, "Give them back to me" and the company saying "okay, here they go" is that the company incurred an operating deficit which it then set off against its share capital reserve. So saying to the Government, "okay have your money back" is not necessarily in accountancy terms a profit and loss account figure. Subject to my limited knowledge of accountancy principles that is the only logical explanation that I can come up with.

HON J J BOSSANO:

Mr Chairman, on that basis, would it not then have been logical that if the money was not recovered from the company but effectively what happened was that a payment for work was returned that all that that would have required then would be that at the time of the forecast outturn for the year 1997/98 that would be corrected by the final audited figure of payment showing what was actually paid. The inconsistency that we have is that the whole purpose presumably of tabling this is so that we look at it and then when we look at it we can see the movement from one side to the other. It seems to me that by putting it as an addition to the reserves last year that the impression that was given then, I think, was that it was going to be done on the basis of a reduction of share capital.

HON CHIEF MINISTER:

I entirely understand the point that the hon Member is making. What he is saying is if what has happened is that a payment has just been returned to sender there is no need to show it as revenue in the Consolidated Fund, it is simply unspent estimate. That would be true on the assumption, which I am not in a position to dislodge but nor is he in a position to make without us making further enquiries, that the payment went out from the Government in the same year as it was returned to the company bearing in mind, that is why I said to him that these are two years worth of accounts for the company but these are only one years worth of accounts for the Government. So the fact that the Government gets the money back in the year 1997/98 does not mean that that is the year in which the company received it from the Government because these are two years worth of accounts for the company. So, for example, the company might have sent back to the Government, I am not suggesting to the hon Member that this is the case, the company may have received money from the Government in the financial year, for example, ended 31st March 1997..... *[HON J J BOSSANO: Or August.]* Possibly, yes, I cannot tell the hon Member right now when the £1 million went out. If he is interested in having a detailed answer to this I can find out those details for him. All I am saying to him is that the logical alternative way of doing it does not necessarily follow in this case because the return of the money to the Government did not necessarily happen in the same year in which it features as revenue and, of course, if it happened in different years and one has already booked it in the previous year as expenditure, if the company sends it back to sender then it is revenue because it has already been recorded as expenditure in a previous year. It would be interesting to see from the 1996/97 accounts how the Community Projects expenditure features in that year and if the hon Member just will bear with us we will give him that information as soon as we can.

HON J J BOSSANO:

Can I just make one final point in that context, Mr Chairman. Even if that is the case, surely if we are talking about the fact that the operating costs over an 18 month period was £4.2 million then even if there was money paid in the first six months there was nothing to have stopped the under-funding happening in the second 12 months over the 18 month period.

Subhead 5 – Workers Hostels: Services by Gibraltar Community Projects Ltd was agreed to and stood part of the Bill.

Subhead 6 – Drugs Misuse Programme

HON J L BALDACHINO:

Mr Chairman, during the debate I gave notice that I would be asking what is the £140,000 estimate. Are wages part of that £140,000?

HON H CORBY:

Yes, it is for the house manager, two counsellors, four clericals and two part-time cooks which makes it £18,800.

HON J L BALDACHINO:

Can he also clarify for me that there is no payment to the MOD for the lease?

HON H CORBY:

There is no payment to the MOD.

HON J J BOSSANO:

Mr Chairman, I think in the 1997 estimates the Minister announced that he expected that Bruce's Farm Rehabilitation Centre to be operational within a couple of months. In fact, we were told earlier that there were problems in getting the place, this is two years.

HON CHIEF MINISTER:

I have explained to the hon Members in my reply what the various reasons are for the delay in opening. The most critical one, the one that has impacted most heavily in the period to which the hon Member refers is the difficulty with the trustees. When in effect we had to change trustees because we could not come to mutually agreeable terms with the first batch.

HON J J BOSSANO:

We have got an original estimate of £130,000 and then an outturn of £60,000. Is it that the centre has been operating already before now?

HON H CORBY:

Let me give the hon Member a full picture of what was happening. It was partly furniture, when we inherited the two buildings there was water penetration insofar as one of the roofs was concerned, we had to do that up. We also had to paint the whole building, we had to buy furniture, we had to buy mattresses et cetera. We bought some of the furniture but we had to pay the MOD for it so that is part and parcel of the whole amount of £60,000. We had to refurbish the place and it was not in a very good state.

HON J J BOSSANO:

Then none of the money there has gone actually into giving assistance to people with problems related to drug rehabilitation?

HON H CORBY:

No, what happened in the interim was that we funded people to go off to centres in Spain as and when they needed it but none was on the rehabilitation side of patients.

HON J J BOSSANO:

Presumably two years ago when they thought that they would be able to run the centre here, what has happened in the interim, have the arrangements with Camp Emmanuel been carrying on all the time until now?

HON CHIEF MINISTER:

Camp Emmanuel closed when Joe Caruana sold the land. There has been an element, I do not know where it is included, of subsidy, we funded one or two of his patients for treatment in rehabilitation centres outside Gibraltar, one or two that he asked to be financed but other than that the subvention, which I think was £50,000-odd to Camp Emmanuel stopped the moment he sold the property.

HON J J BOSSANO:

Did that happen in the last financial year or earlier than that?

HON H CORBY:

I think it happened prior to that but we only received people who wanted rehabilitation this year and we funded those people as they came through Nazareth House or Mr Caruana was involved in as far as asking the Government for help to sending people, actually a chap to UK and at the moment we have got two in Spain.

HON J J BOSSANO:

In the last financial then the money that has gone towards helping people to be rehabilitated because of drug related problems has not been charged to this subhead?

HON CHIEF MINISTER:

No, to the Social Assistance Fund.

HON J J BOSSANO:

Mr Chairman, I am trying to get some idea of what is the client base, how is it that we have coped in the interregnum between the closure of one and the opening of the other? The perceived need which is real but in terms of how big it is, in terms of what do we need to provide, if there has been a gap how have we managed in that period?

HON H CORBY:

I think that a lot of rehabilitation, if one wants to call it that which is not rehabilitation in the sense that people come on heroin and get detoxed in a centre, I think most of it was only counselling insofar as the rehabilitation side of it by Nazareth House and we have got Narcotics Anonymous as well giving counselling to them. When there was a heroin addict then we were asked for help insofar as that person was concerned because one has to have the detox side of it which was not done in Gibraltar and there were also detox done in KGV wing of the hospital and then they took them into Nazareth House for counselling. They did not do any detox in Nazareth House but when a mother wanted her child to go off to Spain they were referred by Joe Caruana and we funded that from our department.

HON J J BOSSANO:

Is it that the unit with the funding that is being provided in this year's estimates is expected to do all those things without the need for anybody to be sent anywhere?

HON H CORBY:

If and when the centre starts it will do the detox either at St Bernard's Hospital or with the Health Authority because it only takes 48 hours in the hospital and then it can be done either in the Health Authority itself or in-house at Bruce's Farm. The crucial time for detox is 48 hours.

HON J J BOSSANO:

Is this something that requires sort of trained people to be able to do?

HON H CORBY:

Yes, I have been speaking to the Minister for Health, there is a psychiatrist coming who is very well versed in that area. He is coming and he is prepared on a controlled basis to do the detox himself.

HON J J BOSSANO:

Then, Mr Chairman, I do not quite understand. To me it would seem that either we are providing something in the rehabilitation centre which we did not have previously or we had it previously in the Health Authority in which case I do not see why it is that we were having to send them abroad or to Spain or wherever if we were able to do it. I mean, we are able to do it now for somebody in Bruce's Farm then presumably we would have been able to do it in the last 12 months, no?

HON K AZOPARDI:

I think what my hon. Colleague is pointing out is that at some stage in a detox procedure they require the assistance of the Health Authority. That assistance may have been able to be delivered prior to the establishment of the centre but what the centre provides is something that was not available in Gibraltar previously in that there may be people who need detox, maybe people who do not but in both cases people who do not need to go to a separate centre out with normal health facilities, people who have undergone the 48 hours then subsequent to that would need to go to a centre separate to any other connected facility so that they can, as the centre name suggests, rehabilitate after being left for a certain amount of time. I think what the centre is intended to achieve is for it to provide those adequate facilities which can concentrate the mind of that individual so that the person can work towards breaking the habit and that was something that was not here before and I think that is what my hon. Colleague is trying to establish. The Health Authority assistance might have been there in the past if called upon but of course there was no point doing the 48 hour detox because that then required a transfer to a separate facility where the person could rehabilitate but there was no facility to which the person could be sent. Added to that, of course, there is the issue that as far as I am aware, there was no particular doctor well-versed, particularly well-versed who had experience in administering these detox procedures but we were lucky enough that the new consultant psychiatrist apparently does have experience in this and has expressed an interest in it.

HON J J BOSSANO:

Can I ask, the arrangements in fact for the operation of the centre, is that the Government are advertising and recruiting people to run it or there is a contract with an organisation?

HON H CORBY:

No, there was an advert by the trustees and about 34 persons applied. It is just a matter now of having the facility in the hospital so that we can open and carry on. The trustees have already interviewed the people and they have already got the applicants to fill these posts.

HON J J BOSSANO:

Is the Minister in a position to say whether any of the people who were previously involved in this type of work in Camp Emmanuel if there were any people from Gibraltar involved over there, are any of them involved in this new operation or not?

HON H CORBY:

I believe that what they were trying to do is get qualified staff, there were no qualified staff, as far as I am aware, in Camp Emmanuel. There have been very good people coming up qualified, one of them is an ex-drug addict who has gone to UK and gone on a mandatory scholarship. These are the people that I think the trustees are looking for, qualified people.

Subhead 6 – Drugs Misuse Programme was agreed to and stood part of the Bill.

Subheads 7 to 10 were agreed to and stood part of the Bill.

Head 5 – B – Social Services Agency

Subhead 1 – Personal Emoluments

HON J C PEREZ:

Mr Chairman, since I cannot identify it here I might as well raise it here and the Minister might enlighten me. Where is the expense of the Home for Children in Care, the one by the KGV Hospital?

HON H CORBY:

The salaries cover Bishop Healy Home, St Bernadette's and all the rest but I will come back to it.

HON J C PEREZ:

I have nothing to question about the salaries, I wanted to ask the Minister specifically and I do not see provision there about certain repairs that were initiated a very long time ago in the home, in fact, when we were still in office, some of them were undertaken pretty quickly but I understand that there are still some repairs that are needed in the Bishop Healy Home.

HON H CORBY:

Is the hon Member talking about the fire escape?

HON J C PEREZ:

Part of it is that, the gate and some things internally that I understand they have not been completed, that it is about three or four years ago.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I think it would be under minor improvements to a Government building what we are talking about. I think that it would come out of the I&D Fund, Head 104, subhead 2.

HON J C PEREZ:

As long as I can get a commitment from the Government that the works will be carried out this year. I am not questioning any particular amount of money, what I would like is a commitment that those works started a long time ago and really until everything is ready, they are not really complete and it is a pity.

HON H CORBY:

We have already addressed that, that is why we have contacted both John Navas of minor works and Michael Gil, they did a study and also we were informed by the Fire Brigade and they are involved and very much on top of that, yes.

HON J J BOSSANO:

On personal emoluments, I asked in the general principles about the cost to the Social Insurance Funds of the administration of those funds by civil servants which appears as revenue in the Government estimates. I have not had an explanation so far and I imagine that the cost of the civil servants concerned appears here on the expenditure side.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, the management charges are calculated for all the special funds using the same methodology which I think we started in 1997/98. We charged the exact direct staff costs, whether that represents a third of a person or half of a person in the particular department and we then calculated a percentage for overheads, for senior management time, the Secretariat, the Treasury and Audit. The hon Member commented about the sharp increase in particular over two years and, in fact, he is quite right that the increase applying the formula which has been applied, the formula has not changed so it is obviously the direct staff input has changed. The increase printed in the Social Assistance Fund between 1997/98 and 1999/2000 from £210,000 to £260,000 is in effect 19 per cent of that increase. Equally the increase between 1994/95 and 1996/97 where certainly I had nothing to do with it, was also 19 per cent so I do not think there has been a sharper increase in these management charges than has necessarily been there before.

HON J J BOSSANO:

With all due respect, it is not a question of whether he has anything to do with it or not. It is that in looking at the estimates the purpose of bringing the Appropriation Bill to the House is to enable us to raise these issues irrespective of what was done in 1994/95. In any case, he has quoted the Social Assistance Fund which I have not mentioned because it does not make any difference what they charge the Social Assistance Fund. It does not matter what the Social Assistance Fund is charged because the Social Assistance Fund is funded by a contribution which we have just voted which is transfer to Social Assistance Fund, Head 5-A, subhead 7 so all that happens in the Social Assistance Fund is that if more amount is built, as it were, and appears as revenue then it will simply reappear on page 52 as expenditure to the Government which needs to be voted, it is a purely circular movement. My concern was particularly when I saw the cost charged to the Closed Benefit Fund which went up from £303,000 to £415,000 between 1998 and this year, if we look at the final figure, which seems quite an extraordinary increase given that if it is the same formula, as the Financial and Development Secretary has said, well the salary of the civil servants have not increased by that ratio in that time. And when we look now at the expenditure the personal emoluments in the Social Services Agency, were presumably the people are employed and paid, do not indicate that kind of increase in expenditure or manpower. I raised it before and I am raising it now simply because, Mr Chairman, as I think I pointed out in the general principles of the Bill, the problem is that if we identify something on the revenue side, we do not vote the revenue, we vote the expenditure so we have to relate it to an expenditure item. I would have expected that if we have got higher costs in the Social Services because of the management of the Social Security Fund then the Social Security Fund is being charged more because the Government are spending more but I would not expect that the Government should not be spending more and be charging the Fund more because, in fact, this is paid out of the contributions to the Social Insurance Fund, it has always been like that, I said that initially. The thing is totally self-funding, there is no Government subsidy.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, the cost has gone up more than the hon Member would expect but I think it is simply because the direct staff time being applied to operating that Fund will have gone up and so it may be that there is half an extra person working in that Fund, or a third of a person in that year and therefore that would also reflect in the overhead which is a percentage. I repeat, it is based on the actual, the department lets the Treasury know and the Treasury lets itself know exactly what staff input is made into the particular Fund and that is actually totted-up and then there is a percentage that is added on for overheads and general expenses and the formula is exactly the same. So if it is increased more than the hon Member would have expected, it can only be because the number of staff working on that particular Fund in that year is expected to increase.

HON J J BOSSANO:

That is all very well, Mr Chairman, but surely the Financial and Development Secretary must accept that since this comes out of social insurance contributions over which the contributors have got no control and over which there is no independent body to suggest whether the thing is being properly costed, there is nothing to stop – I am not saying that this is what is happening but certainly there is nothing to stop the department on that basis deciding, “Let us book somebody to the Social Insurance Fund because if it is more manpower then I would have expected that it should be possible to say why it is that now we need more manpower to administer – it is not that we have had a huge increase in the number of pensioners; it is not that they have to calculate pension increases because the pensions are frozen, so there does not appear to be a readily visible explanation for the increase in cost.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, there was, for instance, taking as an example the one used of the Closed Long-Term Benefit Fund, without having all the details in front of me it is difficult, I think there was a small increase in the amount of time the Treasury were spending on it. Whether that was a real increase or a recognition of time they have been spending before but not charging. There was also the Senior Officer post which came into being who also spends quite a proportion of his time on that. Those are just two examples, there may well be others.

HON J J BOSSANO:

Obviously since the Financial and Development Secretary does not have the information readily available perhaps I can ask him to look into it because if, in fact, we look at page 30 which is when I raised the question in the general principles of the Bill, the Social Insurance Short-Term Benefits Fund will cost less to administer in the next 12 months than in the last one and the Long-Term Fund will cost more. So the formula cannot have been unchanged, there seems to have been a difference in the apportionment of cost to different elements of the Social Insurance Fund otherwise the effect would be the same throughout the three years that are reflected in the estimates and that is not the case. Obviously he cannot give me the answer now because he does not have the figures now.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I can give the hon Member the answer to the Short-Term Fund, in terms of the administration of that Fund as projected in the 1999/2000, there is overall a slight decrease in the number of staff, or the proportion of that staff actually going to be working administering that Fund and therefore applying the formula has brought the cost down.

HON J J BOSSANO:

Perhaps the Financial and Development Secretary could let me have the breakdown of how the figures have been arrived at, eventually?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I would be very happy to do so.

Subhead 1 – Personal Emoluments was agreed to and stood part of the Bill.

Subheads 2 to 5 were agreed to and stood part of the Bill.

Subhead 6 – Support to the Disabled

HON J J BOSSANO:

Mr Chairman, I note that Contingencies which normally would carry a token figure on the basis that one does not know what the contingency is going to be. They are obviously expecting five times as many contingencies this year as they expected 12 months ago.

HON CHIEF MINISTER:

It is £30,000, Mr Chairman, it is for such things as equipment. The hon Member is right, it is a provision and therefore it could be a token amount. Of course if the hon Member wants he can always propose a reduction in the vote for support for the disabled.

HON J J BOSSANO:

If I am in a position to propose a reduction I will wait till we come to the salaries of Ministers under the House of Assembly Head and I will propose a reduction in his salary and an increase for the disabled instead.

Subhead 6 – Support to the Disabled was agreed to and stood part of the Bill.

Subhead 7 – Milbury Care Services Ltd – Contracted Services

HON J L BALDACHINO:

Mr Chairman, I gave notice during the Second Reading of the Bill and maybe the Minister can give me an answer.

HON H CORBY:

There have been variations to the contract and I will explain each one of them. There are six trainees based in Dr Giraldi and the cost estimated at the time of the contract negotiation was taken by Government to be £20,000, in actual fact these costs were £32,315 with social insurance. The variation is the difference in this cost. There is also a stay on place scheme, this scheme operates in the summer holidays and provides care each morning for 12 children from St Martin's School. The scheme operates each morning from 9 till 1; it employs eight students paid directly by Government and staff from Milbury Care Services who also arrange and manage the scheme and the total cost of this is £3,664. Another item is respite care which has gone up because parents have asked for this to be increased. There are now 21 users of the respite service and the total cost is £12,000. The other item is the replacement of the assistant house parent with a total cost of £13,000. That is a variation in the contract which explains the figures that the hon Member has asked.

HON J J BOSSANO:

The amount in the £950,000, Mr Chairman, is both the money retained by Milbury and the money that Milbury pays out, is that correct?

HON H CORBY:

That is correct.

HON J J BOSSANO:

Can the Minister tell me how much of that £950,000 is retained by Milbury?

HON DR B A LINARES:

The part-time social worker additional sum has gone into the consideration because the social worker is provided by Milbury while the local social worker is studying in UK so that is £397,000 plus £11,000 and the prescribed expenditure is £483,000 plus £42,000 which is this additional sum which my hon Colleague has just explained. That is £483,000 plus £42,000.

Subhead 7 – Milbury Services Ltd-Contracted Services was agreed to and stood part of the Bill.

Head 5 – C – Housing Agency

Subhead 1 – Personal Emoluments

HON J L BALDACHINO:

Mr Chairman, can the Minister state if the increase in the forecast outturn on salaries for 1998/99 is due to the extra TG1?

HON H CORBY:

That is correct.

HON J L BALDACHINO:

Is the TG1 employed to do exactly the same as the other two TG1s?

HON CHIEF MINISTER:

His principal function will be to administer a contract for the maintenance and upkeep of Edinburgh House, minor works and that sort of thing. But it will be different, it is not the same role. The Government envisages entering into a contract for the cleansing and maintenance of Edinburgh House and he will manage that contract.

HON J L BALDACHINO:

By the answer the Chief Minister has just given, I suppose he is still not in post, is he?

HON CHIEF MINISTER:

He is not in post. As I recall the advertisement has just gone out or is just about to go out, no he is not in post.

Subhead 1 – Personal Emoluments was agreed to and stood part of the Bill.

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

Subhead 3 – Other Charges

HON J L BALDACHINO:

Mr Chairman, out of curiosity, this is the only office that has not got a forecast outturn on electricity and water, is it that the Housing Agency do not use electricity?

HON CHIEF MINISTER:

It may be that it is not separately metered because in effect they squat in the building that is basically the Ministry of the Environment. It may be that those two or three rooms occupied by Housing is not separately metered and it goes in with the rest of the City Hall.

HON J L BALDACHINO:

Accepting what the Chief Minister has said but we estimated last year £1,000 and we are doing it again this year on the estimate side.

HON CHIEF MINISTER:

He is absolutely right, Mr Chairman.

Subhead 3 – Other Charges was agreed to and stood part of the Bill.

Subhead 4 was agreed to and stood part of the Bill.

Subhead 5 – Other Housing Payments

HON J L BALDACHINO:

Can I ask the Minister for Housing if this is payment for the security at Edinburgh House because I have been looking through the estimates and I cannot find that provision? Is it included there?

HON H CORBY:

Other Housing Payments is the Rosia Dale service charges for Government tenants.

HON J L BALDACHINO:

There is a service which is being provided at Edinburgh House which is the security but I cannot find it anywhere because all the other contracts have contract beside it and I cannot find it in the estimates, where is it being charged to?

HON CHIEF MINISTER:

Mr Chairman, I think but to work that way round and tell the hon Member where in the estimates a particular item of expenditure, but from memory I think it is included in the Improvement and Development Fund as part of the cost of the project given that it was really to prevent vandalism whilst the works are in progress, so it is really a form of labour cost related to the security of the works. If he has not been able to find it in the Consolidated Fund then that would tend to corroborate my recollection which is that it is being paid for out of the Improvement and Development Fund vote for that project.

HON J L BALDACHINO:

I am only asking because I think it went out to tender, I think it was contracted out to a company. Is that what is being provided? It is a company that is providing the service, is that correct?

HON CHIEF MINISTER:

Yes, I think it went out to tender and the fact that it is a contracted in service does not make it any less payable out of the Improvement and Development Fund than if it was a direct labour cost. I do not think the appropriateness or otherwise of paying it out of the Improvement and Development Fund does not depend on whether it is direct labour or contracted-in labour.

Subhead 5 – Other Housing Payments was agreed to and stood part of the Bill.

Subheads 6 and 7 were agreed to and stood part of the Bill.

Head 5 – D – Prison

Subheads 1 to 6 were agreed to and stood part of the Bill.

HEAD 6 – TOURISM AND TRANSPORT

Head 6-A – Tourism

Subheads 1 to 4 were agreed to and stood part of the Bill.

Subhead 5 – General Embellishment

HON DR J J GARCIA:

Mr Chairman, can the Government say what the reason is for the great disparity between the estimate and the outturn for 1998/99 on the general embellishment?

HON J J HOLLIDAY:

The principle behind this particular head is the budget that was put aside for general embellishment using Community Projects employees. The reality is that it has always been very difficult to obtain the labour force in this particular area as they are tasked with specific within other ministries and get them round to actually focusing them on any particular embellishment programme for our Ministry was never possible. So we have put in a bid for £30,000 for this coming year and hopefully we will achieve something during this coming year. We have been working with the directors and management of Community Projects in trying to put in place a certain amount of embellishment in certain areas.

HON DR J J GARCIA:

Is this the hit squad which was mentioned last year?

HON J J HOLLIDAY:

That is correct, the hit squad that never was.

Subhead 5 – General Embellishment was agreed to and stood part of the Bill.

Subhead 6 was agreed to and stood part of the Bill.

Subhead 7 – Official Functions

HON DR J J GARCIA:

There is also quite a large disparity between the estimate and the outturn in this particular subhead, is there any reason for that?

HON J J HOLLIDAY:

The actual 1997/98 figure included the opening of Main Street which we had some celebrations the day that Main Street was officially opened, therefore the figure was increased. Subsequent to that the figure has been much lower because we took the view that any official functions in relation to a particular event would be charged from the marketing vote as part of that particular event. In other words, if the Blue Water Rally comes to Gibraltar and I, as Minister, host a reception, it would be part of the budget attributed to that particular event rather than have an official function aspect of it so therefore the actual spend was in region of about £4,000 for this last year and the budget is £7,000 for this year.

Subhead 7 – Official Functions was agreed to and stood part of the Bill.

Subhead 8 – Marketing, Promotions and Conferences

HON DR J J GARCIA:

Mr Chairman, in this particular subhead there has actually been an overspending of £135,000 and there is a further increase projected for next year in the estimates to £825,000. Is there a specific project or any idea which the Government have in mind?

HON J J HOLLIDAY:

Basically the overspend on this last financial year is as a result of opportunities that arose and which Government took the view we ought to pursue with. As far as the increase for this year we have gone, I think, I addressed this during my budget presentation, obviously we now have an office in Madrid which we intend to make use of; we are targeting Spain as a main source market this year and therefore our budget has been increased to meet this particular requirement.

Subhead 8 – Marketing, Promotions and Conferences was agreed to and stood part of the Bill.

Subhead 9 Apes Management

HON J C PEREZ:

Mr Chairman, one cannot understand how it is that the Government kill off 24 apes and instead of providing £4,000 for food they now provide £40,000. Is it that the apes left are eating more?

HON J J HOLLIDAY:

No, in the last financial year the cost of food was part of the Sights Management contract. This was terminated in February this year so we only had to feed the apes for a few weeks before the end of the year so the cost was obviously relatively lower. This year obviously we have to meet the full cost of that and we have made provision for the management, the food and the staff which will now come under the Gibraltar Tourist Board.

Subhead 9 – Apes Management was agreed to and stood part of the Bill.

Subhead 10 – Hotel Training School

HON J J BOSSANO:

Mr Chairman, I think my hon Colleague raised in his contribution to the general principles of the Bill the fact of underspending on the estimates on training. The estimate for this particular item last year, the training courses related to hotel training was £90,000, they have spent £29,000 instead of £90,000. I do not quite understand that because presumably the cost of running the courses is not related to the number of people. Even if there are less people the cost is the same, is it not?

HON J J HOLLIDAY:

Mr Chairman, I think the figure when the estimates for 1998/99 were prepared were done very much as what they were, an estimate, we did not have the experience, we did not know the number of students, we did not know the actual cost so we did a global annual figure for this particular year. The school actually opened in September and the first intake was just 20 students and therefore the second intake then progressed later on that year or at the beginning of this year so relatively speaking till the end of March what we are really talking is of two intakes for only six months of the year for the first intake and three months for the second intake. So it obviously reflects part of the cost of the Hotel Training School for that particular period only.

HON DR B A LINARES:

It may be pertinent also to point out that the actual allowances for the trainees irrespective of the number of trainees at any particular time does not come from this vote. This is paid out of the vocational cadet vote.

HON CHIEF MINISTER:

The hon Member's question which I do not think has been answered is whether the number of students is a factor in the cost. *[HON J J BOSSANO: I am assuming it is not a factor.]* It may not be so, it may well be that as the courses are in effect being bought from Julia Sibley Associates, it may well be that there is a per head charge for the cost because this is not infrastructure that we are providing. The delivery of the course is contracted in from a specialist provider of that service and there may well be, I am not familiar with the contract, a per head charge.

HON J J BOSSANO:

I would not expect the Chief Minister necessarily to know that but presumably somebody must know whether they are paying simply on a per capita basis or a fixed sum for running a course.

HON J J HOLLIDAY:

There is both elements, there is an element for actually undertaking the contract and running the actual course itself and then there is a per head cost which is attributed to the books and the actual course material that is required which is charged on a per head basis.

HON J J BOSSANO:

I questioned in relation to Appendix B on page 114 the recharging of expenditure and, in fact, there was no real explanation given as to why there should be a recharging except that it had been decided to recharge it just to bring the money back into the Government. But we have got annual training expenses £250,000 estimate, £279,000 forecast outturn. I have difficulty in understanding how it is that one estimates £250,000 if one spends £128,000 and one estimates £279,000 when one spends £31,000. *[Interruption]* I accept that there is more than one department but is it that we are being told that the mere £100,000

less being spent here has been overspent in another department because I have not seen it so far? Mr Chairman, last year when the House voted £128,000 and I questioned.... *[HON CHIEF MINISTER: Where are we on?]* We are on page 61, Head 6-A, subhead 10 and the total amount under subhead 10, Hotel Training School was £128,000 and when I asked last year why we were charging £250,000 annual training reimbursement in page 114, Gibraltar Development Corporation, Appendix B, I was told that of the £250,000, £128,000 came from here. Given the fact that we are now being told that the outturn is £31,000 instead of £128,000 I am questioning how it is that if the Government have spent £31,000 instead of £128,000 they are charging the Development Corporation £279,000 instead of £250,000 in the forecast outturn of the reimbursement annual training expenses for this current year that has just finished?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I am afraid I am not able to account what people may have said on some previous occasion but that reimbursement of Consolidated Fund expenditure annual training expenses relates solely to the expenses of Head 1-B plus the social insurance pensions contributions that are paid direct out of the Consolidated Fund.

Head 10 – Hotel Training School was agreed to and stood part of the Bill.

Subhead 11 – Gibraltar Tourism Board

HON DR J J GARCIA:

Mr Chairman, can Government say how many people are actually employed or paid out of the £400,000 estimate for next year?

HON J J HOLLIDAY:

I am not absolutely certain but I think the figure is 22, there has not been any change since the last budget but I think I recall the

figure of 22. The increase from £349,000 to £400,000 is the result, obviously we are making provision for additional bodies which are going to be required, that is three, for the running of the coach park and the ferry terminal which will now be run by the Gibraltar Tourist Board and not by Terminal Management and therefore we are making provision for that in the estimates because we hope that these will be in operation as from August this year.

HON DR J J GARCIA:

Mr Chairman, would it be possible, at this stage, to ask for a breakdown of the various posts and the various salaries which are involved, would that information be available?

HON J J HOLLIDAY:

I do not have this information with me at the moment, no but I will make it available to the hon Member if he requires it.

Subhead 11 – Gibraltar Tourism Board was agreed to and stood part of the Bill.

Subhead 12 – Tourism Sites

HON DR J J GARCIA:

Mr Chairman, again really the same question regarding Subhead 12(b), the number of people involved in that vote.

HON J J HOLLIDAY:

Those are staff that we have taken over from Sights Management who have now been transferred to the Gibraltar Development Corporation and are now working for the Gibraltar Tourist Board.

HON DR J J GARCIA:

Do we know how many are involved?

HON J J HOLLIDAY:

I answered the question in the House only recently the total figure is about 54, as far as the permanent posts are concerned, I think the figure is about 35.

Subhead 12 – Tourism Sites was agreed to and stood part of the Bill.

Subhead 13 – Tourism Information Services

HON DR J J GARCIA:

Mr Chairman, on subhead 13, is that essentially the new services, I think the Minister mentioned to do with the ferry terminal and the coach terminal, the information centres at those two points of entry?

HON J J HOLLIDAY:

This is what we call the History Alive Project and that is bringing to light certain activity in the centre of town during the summer months in order to try and convince day trippers to stay longer by actually having a parade and people in costumes et cetera. Last year we found it extremely difficult to recruit people to do that so we are still hopeful that this will happen this year so if anybody is looking for a uniformed job they can definitely apply as a part-time anyway.

Subhead 13 – Tourism Information Services was agreed to and stood part of the Bill.

Subhead 14 – Cleaning Services

HON J C PEREZ:

Mr Chairman, I see that there is no provision for the Carreras Concert, is it that they are not going to repeat it?

HON CHIEF MINISTER:

No, we have no immediate plans to repeat but let me say if it were to be repeated I am sure it would be as enjoyable as the last one.

HON J L BALDACHINO:

Mr Chairman, on subhead 14(a), can we have an explanation why it was £52,000 under cleaning services of beaches and they only spent £11,000?

HON J J HOLLIDAY:

This was a subhead which I believe was changed, it used to be cleaning services before and that cleaning services was for the cleaning of the cruise terminal, ferry terminal and coach park, in actual fact because they went into basically a construction site, there has not been any cleaning contract so basically £11,000 covers the cleaning of the cruise terminal and nothing else. This year we have made provision for that and obviously now we have got beaches where we have had to make provision to cover some of the cleaning that used to be undertaken by Sights Management for non-summer months in order to have an all-year round cleaning function in the beaches. This may change with the new cleaning contract but we have made provision there to at least have a budget in place to cover us temporarily.

HON J J BOSSANO:

Is he saying that the £52,000 in the original estimate was not for beaches, is that correct?

HON J J HOLLIDAY:

No, originally it was not for beaches but I think that there has been a change this year in that it has been subdivided into tourists and other sites and beaches and therefore there is the overlap which originally was not included.

Subhead 14 – Cleaning Services was agreed to and stood part of the Bill.

Head 6-B – Transport – Airport

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

Subhead 3 – Other Charges

HON J J BOSSANO:

Mr Chairman, the actual contract for the running of the airport actually shows a decline in the outturn and in the provision for this year. Is there an in-built clause in the contract that says they reduce the value every year?

HON J J HOLLIDAY:

My understanding here is that when we came into office in May 1996 there were arrears in the payment of Terminal Management to the Government and, in fact, the figure of £828,000 covers a 15 month period. The £700,000 is what we now have as a sort of level and we are now up-to-date on this collection with them so the figure should be now stabling at £700,000 unless obviously there is substantial increase of traffic and therefore there could be a difference in the proportion of the contract.

Subhead 3 - Other Charges was agreed to and stood part of the Bill.

Head 6-C – Transport – Roads

Subhead 1 – Personal Emoluments

HON J C PEREZ:

It seems to me that the provision for salaries given that there is no increase in staff there is a bit steeper than what would be normal, I would presume that the normal thing would be to provide

something like 10 per cent for salary increases or even less but there is about £34,000; is there any intention of recruiting non-industrial staff?

HON J J HOLLIDAY:

I think the explanation here is that we have had some vacancies throughout the year which have not been filled. Actual posts that have not had people in place. The figure of £254,000 takes into account that these positions are now going to be filled.

HON CHIEF MINISTER:

Last year there was one supervisor vacancy and one TG1 vacancy out of 14. In this year's provision of 14 there is still one vacancy in work supervisor and it is now provided for.

Subhead 1 – Personal Emoluments was agreed to and stood part of the Bill.

Subhead 2 – Industrial Wages

HON J C PEREZ:

Is it the same case in respect of the industrial wages? The £185,000 covers the wages of the 22 people now in post. The Minister said that there was going to be an increase. I would suggest that the increase is not of one, because that is what is reflected there.

HON CHIEF MINISTER:

The increase reflects the fact that there is currently one vacancy in the 22. The increase does not reflect any proposed increase in staff which is still too much on the drawing board to be reflected here. There is one vacancy out of the 22.

Subhead 2 – Industrial Wages was agreed to and stood part of the Bill.

Subheads 3 and 4 were agreed to and stood part of the Bill.

Subhead 5 – Materials and Other Costs

HON J C PEREZ:

Mr Chairman, I think I made the point in my contribution that the provision in the estimates under forecast outturn reflects the inability of the manpower in the section to spend the money allocated. The Minister has just said that the employment of extra staff is very much on the drawing board, I would suggest to him that unless that post is not filled that the estimate here could not possibly be met with the manpower that there is in sewers and highways.

HON J J HOLLIDAY:

Mr Chairman, in respect of both highways and sewers, there was an underspend basically because the department actually tried to settle some of the bills in respect of the last financial year on the last day of the financial year and were not able to process the payments so in actual fact if one were to take those into account there has been an underspend but not to the amount which is reflected in these figures which are obviously produced in advance.

HON J C PEREZ:

But the Minister's explanation would suggest that some of this work also went out to contract and the payment was to a contractor where the normal thing would be that the contractor would get paid from the Improvement and Development Fund, major works and the explanation given by the Chief Minister that minor works in the department would come out of the recurrent expenditure makes sense to me.

HON CHIEF MINISTER:

Mr Chairman, I cannot tell the hon Member that there is no element of truth in that but there is also materials in respect of direct labour force. The explanation that the hon Member has given applies principally to materials used by the direct labour force.

HON J C PEREZ:

And that is in respect of the sewers as well?

HON J J HOLLIDAY:

Yes, that is in respect of the sewers as well. I think the Hon Mr Perez is correct in saying that some of this vote was actually used for outside work. There are certain jobs where we do not have the expertise or maybe the manpower at the time to be able to do it. There are times that the men are actually tasked with a particular job in an emergency builds up and that basically, the Highway Engineer discusses with me when there is a possibility; there are times when there are four men on this section to carry out works which they feel they do not have the expertise to do and therefore rather than leave the job we go ahead and we tender out to get the job done as soon as possible.

HON J C PEREZ:

I would suspect that similarly that some of the work done by the direct labour is charged to the Improvement and Development Fund for work which has been approved already there?

HON J J HOLLIDAY:

Yes, there are programmes of work in the Improvement and Development Fund where the direct labour feel that they are able to cope with it, yes that is done. But I tend to have a programme in place, for example, for road resurfacing for the direct labour and for outside contract. My undertaking to the men in this section

has always been that they will always have enough work, more than they can chew and I have a full programme for the whole year, week after week to be able to cover their full programme throughout the whole year.

Subhead 5 – Materials and Other Costs was agreed to and stood part of the Bill.

Head 6-D – Transport – Traffic

Subhead 1 – Personal Emoluments

HON J C PEREZ:

Mr Chairman, I recall the arguments I put to the Minister on the position of the income derived from the MOT tests. Could the Minister say what happened last year that the income was less?

HON J J HOLLIDAY:

Mr Chairman, when the hon Member raised this during his presentation I had this checked and in actual fact the outturn as reflected in the figures here in front of me is actually much higher. When these figures are prepared towards the end of the year and when the public were made aware of the fact that they would need their MOT certificates in order to be able to get their road tax there was an avalanche of people to get those tests done so the figure is not very much lower than what we had estimated in the original figure but obviously it is not reflected in the figures in the revenue as presented to the House.

Subhead 1 – Personal Emoluments was agreed to and stood part of the Bill.

Subheads 2 to 4 were agreed to and stood part of the Bill.

Head 6-E – Transport – Port

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

Head 6-F – Transport – Shipping Registry

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

Subhead 4 – Operational Expenses

HON A J ISOLA:

My question is twofold, I do not see any provision either under subhead 4 – Operational expenses under Shipping Registry or indeed under the Port, for the Chief Executive. I am not certain as to whether Government intend to deal with that under the Shipping Registry Head or the Port Head. The second question is, Mr Chairman, in respect of marketing, bearing in mind we have been told by the Minister that the Chief Executive will have a more commercial role and that there will be indeed a lot of marketing, there does not seem to be any provision in either the Shipping Registry or the Port Head for any of that marketing. There is a standard marketing budget of £20,000 in respect of the Shipping Registry but there is nothing in the previous or this one that was not there last year.

HON J J HOLLIDAY:

Mr Chairman, as far as the estimates that are being presented to the House in respect of the Port they reflect the situation as it stands today, it has not made provisions for the changes unless it is also reflected in the revenue side where we are going to restructure all the revenue raising measures in the Port and therefore the structure that we see here is exactly the structure that exists today. Obviously there are changes envisaged and when these take place obviously we will have to bear these in mind with supplementary funding. As far as the marketing aspect, let me say that the Port has a budget of £10,000 for advertising and the Shipping Registry has £20,000. My strategy in both promoting the Port and the Shipping Registry is to work very much with the private sector. In fact, what we have done is that, for example, when we went to Athens I worked around five

different companies who are Port operators who have an interest. They have now convinced me that we ought to do a presentation in Athens and they will be funding part of it and the cost will be relatively nothing to the Government. They fund these promotions themselves so therefore we are using the private sector to be able to put funds in to actually promote the Port as part of their own strategy. They welcome the fact that they have the support of the Government in the presence of the Minister, all that adds to their own promotional and marketing efforts in their respective market. So we feel that these funds can take us a very long way. Contrary to what I find in other sectors that I deal with where I try to convince them to participate in marketing and do not get a penny out of them, the Port is an area where the private sector does come over extremely favourably with any proposal. The Land and Marines Handbook for the Port, for example, which will be published possibly later this month, has been totally financed by the private sector and, in fact, the Government are only putting in an advertisement as a contribution towards the actual publication. But in essence the private sector has been helping and assisting in this and has put their money where their mouth is.

Subhead 4 – Operational Expenses was agreed to and stood part of the Bill.

Subhead 5 was agreed to and stood part of the Bill.

HEAD 7 – TRADE AND INDUSTRY

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

Subhead 4 – Operational Expenses

HON A J ISOLA:

May I just ask on land management consultants fees, there was a provision of £10,000 last year and £33,000 were spent, can I just ask in respect of what that is?

HON P C MONTEGRIFFO:

Mr Chairman, that is a whole range of different fees that arise in the context of, for example, valuation fees that are required in respect of any particular problem that is related to land; it might also be surveyors' fees in some particular circumstances, I think the provision this year was largely due to a valuation issue that we have that we are going to pursue further.

Subhead 4 – Operational Expenses was agreed to and stood part of the Bill.

Subhead 5 was agreed to and stood part of the Bill.

Subhead 6 – Marketing, Promotions and Conferences

HON A J ISOLA:

In this respect last year when I asked a question as to what marketing the administration and statistics division was going to do, I think the Minister said that this was in fact the part that funded the Minister's and his team's travelling on these promotional visits. Is it a fact that less of that is intended in the forthcoming 12 months or would the expense be what was budgeted last year?

HON P C MONTEGRIFFO:

What happens is that last year we took a decision to actually split the Trade and Industry marketing budget. There had been an overrun going back I think two years because of the HMS Britannia trip. We had to spend more than the original estimate and we decided last year to actually split the marketing into three different Heads – administration, commercial and finance centre division. It was very much just a sort of hit and miss type of assessment. What has happened this year certainly as far as the Minister's expenditure is concerned, he will see that I have considerably underspent from the estimate and therefore we thought it reasonable and therefore appropriate to reduce the

estimate for this year. We have simply reflected the fact that less was spent this year than had been forecast in a lower figure for the forthcoming year. It does not reflect any particular assessment of what we will be doing in the course of the next 12 months.

Subhead 6 – Marketing, Promotions and Conferences was agreed to and stood part of the Bill.

Subhead 7 – Contribution to Financial Services Commission

HON J J BOSSANO:

Mr Chairman, as I understand it the contribution to the Financial Services Commission was to cover the shortfall between their spending and their income, is that not the case? Why are they expecting that shortfall to grow by £30,000 in the next 12 months?

HON P C MONTEGRIFFO:

There are various reasons, for example, some funding that has come from the FCO on the basis that somebody was seconded to Gibraltar under certain arrangements. It is finishing and therefore the funding now will be done locally. Furthermore there have been additional regulatory requirements that have necessitated further resourcing. The Government take a very, very close look at the estimates prepared by the Financial Services Commission when deciding what level of subvention is made and I can assure the hon Member that drawdown by the Commission is only effected when we are entirely satisfied that they have exhausted every other possible revenue option. There are indeed on-going discussions with the FSC with regard to a number of other revenue streams not least certain contingencies that the FSC have in their estimates and those will be seen probably from the accounts laid in this House. There is also, of course, the issue, Mr Chairman, in the medium term of whether there should not be some form of review of certain fees paid by the industry in respect of the running of the Commission. Fees have not been looked at for many years and there are certainly some categories of activities where the fee has fallen behind by quite some measure

as compared to other jurisdictions. So in direct answer to the hon Member's question, there are certain sources of income that the Commission enjoy that are ceasing, funding of regulators that we are taking over. There is further regulatory resourcing that has arisen in the course of the year and that has given rise to further need for funding. I am happy for the Financial and Development Secretary to add anything further since he has dealt with the FSC in detail, if I have left anything out certainly I will be happy for him to add if he thinks so.

HON J J BOSSANO:

Is it that their expenditure is going to be higher this year or that their income is going to be lower, which of the two is it?

HON P C MONTEGRIFFO:

I think the expenditure is going to be higher. I think the income, I am not sure if it is projected to be significantly lower, I do not believe so, they are fairly static. There are one or two banks that have terminated their licence position in Gibraltar so it may be marginal but there is nothing major on the income side which has been projected therefore taking a conservative view on new entrants coming into Gibraltar et cetera. It is primarily the expenditure side that is

HON J J BOSSANO:

The expenditure side is because they are now having to pay for certain salaries which before they only had to pay part of because it was a contract, is that correct?

HON P C MONTEGRIFFO:

That is one of the aspects of it. The other aspect is just general regulatory need to beef-up certain resources. There is a need for certain expertise that they have had to contract in. I suppose that part of the increase may simply be due to salary increases and

normal salary increases that are index-linked or are otherwise provided for. It arises from a combination of those factors.

Subhead 7 – Contribution to Financial Services Commission was agreed to and stood part of the Bill.

Commercial Division

Subheads 8 to 11 were agreed to and stood part of the Bill.

Finance Centre Division

Subheads 12 and 13 were agreed to and stood part of the Bill.

Subhead 14 – Marketing, Promotions and Conferences

HON A J ISOLA:

Can I ask in respect of that subhead, Mr Chairman, whether in fact there is a programme or is that just a head which they work towards or is there a programme on marketing over the next 12 months?

HON P C MONTEGRIFFO:

Yes, there is a programme of marketing and promotions and conferences generally. That obviously also includes advertising and the whole range of promotional effort but it is not something cast in cement. It is not something cast in stone, it is something that we adapt to as opportunities arise and as propositions are put to the Government. A lot of that marketing goes in support of private sector initiatives and therefore it is quite common with only perhaps two or three months needing for a company to come to us and say, "There is a conference that is taking place here. We would like the Government to accompany us on a particular initiative". So therefore we have a fairly flexible approach but

certainly there is more than enough in our plans to use that money but we will only expend as we move along depending on competing claims that might be made of the funds as we move forward.

HON A J ISOLA:

Is the Gibraltar Annual Insurance Conference covered in this?

HON P C MONTEGRIFFO:

Yes, it is, it would all come under that Head.

Subhead 14 – Marketing, Promotions and Conferences was agreed to and stood part of the Bill.

Subhead 15 – Gibraltar Development Corporation Staff Services

HON A J ISOLA:

There is an increase there which is obviously over and above the pay settlement. Could the Minister confirm whether in fact more people are to be recruited into that division or what that increase is for?

HON P C MONTEGRIFFO:

I think that is in respect of the gratuity that the current post holder is entitled to, that would explain the majority of that, there is a gratuity that he is contractually entitled to. It is likely that there will be a successor to him rather than his actually staying in post now. I can certainly indicate that to the House at this stage and I think that is the provision that is being made in the estimates. It is likely that there will actually be a new successor to the current post holder and therefore there will be a draw down gratuity which was only put there at this stage prospectively because had he stayed then that would have been rolled forward.

HON A J ISOLA:

In respect of how many people is this for?

HON P C MONTEGRIFFO:

For one. This is the post of Finance Centre Director.

HON J J BOSSANO:

Mr Chairman, then the £113,000 forecast outturn for 1998/99 which does not include the gratuity, is that his annual salary? Is there anything else there?

HON P C MONTEGRIFFO:

There is one extra body actually. There is an extra body but it is salary and also provision, I think the House is aware of, for allowances in terms of expenses and other matters related to the contract. Primarily it is the Finance Centre Director's expenses and salary and one extra body.

Subhead 15 – Gibraltar Development Corporation Staff Services was agreed to and stood part of the Bill.

Telecommunications Division

Subhead 16 – Telecommunications Regulator – Designate

HON J C PEREZ:

Mr Chairman, I see that that vote is divided in two. I thought that everybody in this Head was under the Gibraltar Development Corporation or is it that there are some staff who are civil servants and some of the staff comes under the GDC? The Regulator designate is now an employee of the GDC if I remember correctly.

HON P C MONTEGRIFFO:

Mr Chairman, no. As far as I am aware the Telecoms Regulator is still a secondee of GBC, his position is still to be regularised. As far as the others are concerned, they are I believe all GDC employees.

HON J C PEREZ:

So it is the Regulator's salary that is shown there?

HON P C MONTEGRIFFO:

Yes, that is right.

HON J C PEREZ:

And that is what, deducted from the money given to GBC? That is to say, the sum of money awarded to GBC contains his salary and then that is deducted?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, my understanding is we do refund GBC the cost of that salary.

Subhead 16 – Telecommunications Regulator – Designate was agreed to and stood part of the Bill.

Subhead 17 was agreed to and stood part of the Bill.

Subhead 18 – Frequency Co-ordinator Expenses

HON J C PEREZ:

Mr Chairman, if I recall part of the expenses of the Frequency Co-ordinator are recovered from prospective satellite, that is still the case?

HON P C MONTEGRIFFO:

We intend that that position should continue as we go forward, that the work of the Co-ordinator who is not based in Gibraltar most of the time is in respect of the work of the satellite companies have an involvement with and we would certainly envisage their contribution continuing to cover the entire cost of that.

HON J C PEREZ:

Can I just ask whether the Co-ordinator is the same one who was in post when we left office because I do recall that the gentleman in question was sick for some time?

HON P C MONTEGRIFFO:

The guy that we use is a chap called Mr Maurice Daniels. Yes, he is the same gentleman.

Subhead 18 – Frequency Co-ordinator Expenses was agreed to and stood part of the Bill.

HEAD 8 – ADMINISTRATION

Head 8-A – Secretariat

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

Subhead 11 – Compensation Scheme – Fast Launches/Vehicle Windows

HON J C PEREZ:

Mr Chairman, on the vehicle windows, is this the item that is still pending which does not allow the Government to respond to the problem of the car importers?

HON CHIEF MINISTER:

Yes, Mr Chairman, but I am happy to tell the hon Member that a decision has just been made about which of the three options put out to the Government to resolve the problem we will pursue so we are now hopeful that that will be pursued and given the choice that we have made, we do not expect to involve the payment of compensation.

Subhead 11 – Compensation Scheme – Fast Launches/Vehicle Windows was agreed to and stood part of the Bill.

Subhead 12 – Private Sector Fees for Legal Advice

HON J J BOSSANO:

Mr Chairman, the increase from £150,000 to £565,000 in the outturn, I think there was some money shown in supplementary estimates but not this much. Is it that it has not yet come through?

HON CHIEF MINISTER:

The figure in supplementary estimates would be a balanced figure from what could not have been vired from somewhere else. The high level of this figure in 1998 reflects the fact that Government are involved in two or three large and expensive, it has to be said, legal cases. There is the Tabacalera case, there is the Fatima Oussa case, there was the Calpe Cleaning case, the Incinerator arbitration and that is what it reflects. A lot of those cases have been resolved, for example, the hearing of the Calpe Cleaning case is over, we are just waiting for judgement. The Fatima Oussa case is satisfactorily concluded. The Tabacalera case is also satisfactorily concluded. So we do expect the figure to reduce but simply because there are fewer cases running.

HON J J BOSSANO:

But the cases that he has mentioned were cases that were there at the beginning of the financial year when £150,000 was put?

HON CHIEF MINISTER:

Yes and no but with civil litigation the expenditure kicks in in a difficult to predict way, one never knows when one is going to come to trial, one's counsel's fees kick in in the run-up to the trial and therefore the fact of the case is running. The costs involved in civil litigation are not equally and uniformly spread out throughout the whole period between issue of the writ and final judgement. There are times of intense expense and there are times of very little expense and it is very difficult to estimate. I agree, I would have thought that to have estimated £150,000 in 1998/99, I think it was more than an element of wishful thinking. I agree that there was an under-provision but I think that does not invalidate the fact that in any case it is difficult to estimate.

Subhead 12 – Private Sector Fees for Legal Advice was agreed to and stood part of the Bill.

Subheads 13 to 15 were agreed to and stood part of the Bill.

Subhead 16 – Grants

HON J J BOSSANO:

Mr Chairman, on John Mackintosh Homes, the provision this year is in fact exactly the same as the outturn for the year that has just finished, is it that

HON CHIEF MINISTER:

Mr Chairman, we are further along the road now as a result of the intense meetings that have taken place during the last few weeks but at the time that this work was done we just could not even begin to conceptualise what the cost implication might be of the new structure because the new structure itself was so much up in the clouds so there is no provision here for any potential cost implication and there is bound to be some, of whatever we might do differently relating to Mount Alvernia in the future and that will have to come from supplementary funding.

HON J J BOSSANO:

But if something different is done there will be cost implications, is that right?

HON CHIEF MINISTER:

Yes, realistically speaking, Mr chairman, I do not think we can improve the service for the same or less money.

Subhead 16 – Grants was agreed to and stood part of the Bill.

Subheads 17 to 20 were agreed to and stood part of the Bill.

Subhead 21 – Development Studies

HON A J ISOLA:

Can I just ask, Mr Chairman, what development studies are foreseen to merit that increase? Is this the Input/Output Study that we are talking about?

HON CHIEF MINISTER:

It is a provision but it is a provision against envisaged things. There is the Input/Output Study, there is the Electricity Review being undertaken by Manx Energy, we are also given that there is such growth in what the hon Member's like for political purposes to call "gambling" we are more comfortable with the emphasis on gaming, we are asking for a study into our legislation which really provides very little regulatory mechanism. So we are engaging in gaming regulation and legislation consultants to advise us on what legislation we need so that we, as an administration, can regulate people providing gaming facilities from Gibraltar, whether it is on the internet or whether it is offshore bookmaking on the telephone, this sort of thing. At the moment we have a Gaming Ordinance which was conceived in a completely different climate

with one bookmaker and one casino. Now gaming is proliferating in various facets and we feel that we are under-legislated and that is one of the studies.

Subhead 21 – Development Studies was agreed to and stood part of the Bill.

Subheads 22 and 23 were agreed to and stood part of the Bill.

Head 8-B – Personnel

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

Subhead 6 – Staff Terminal Payments

HON J C PEREZ:

Is it possible to get an explanation on that subhead, on the £7,000?

HON CHIEF MINISTER:

I understand that this is a provision for a case that is envisaged to be arising this financial year of somebody who has left the service in circumstances that would disentitle him to a gratuity and this is a provision for providing some sort of exit.

HON J C PEREZ:

An ex gratia payment?

HON CHIEF MINISTER:

Yes, an ex gratia payment in circumstances where because of the strictness of which the Pensions Ordinance is drafted he would not be entitled to a gratuity.

Subhead 6 – Staff Terminal Payments was agreed to and stood part of the Bill.

Head 8-C – Civil Status and Registration Office

Subheads 1 to 4 were agreed to and stood part of the Bill.

HEAD 9 – FINANCE

Head 9-A – Financial and Development Secretary

Subheads 1 to 4 were agreed to and stood part of the Bill.

Head 9-B – Treasury

Subheads 1 to 8 were agreed to and stood part of the Bill.

Subhead 9 – Contribution to Gibraltar Development Corporation

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, we have a figure of £61,000 in 1998/99 and £70,000 for the estimate 1998/99 and so forth. It should not appear against the Arrears Section, it should appear against the General Office. We will amend that in the final book.

HON J C PEREZ:

I presume, Mr Chairman, that there is another figure for item (b) which is missing?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

No, in 1997/98 and 1998/99 the Arrears Section was not using any GDC staff whereas there is a proposal to do so from this financial year.

Subhead 9 – Contribution to Gibraltar Development Corporation was agreed to and stood part of the Bill.

Subhead 10 – Contracted Services

HON J C PEREZ:

Mr Chairman, can I remind the Minister that he promised us an explanation on the question of electricity arrears and on the question of the contract of the collection of electricity by Land Property Services.

HON CHIEF MINISTER:

Yes, Mr Chairman, starting first of all with the LPS contract; there is one contract with LPS which covers two functions: (1) the collection of arrears, and (2) land titles, neither of which has really got off the ground. The Government never got round to activate the transfer of the land titles from the Supreme Court to LPS and the hon Member knows the background as we have discussed before, to the fact that the arrears collection has not really got off the ground either. The original reason for that was as we have explained before, the difficulty in getting the information from Lyonnaise to LPS but it has to be said that now the principal reason is that the Government are considering, in conjunction with LPS, the entirety of that contractual arrangements and they have made proposals to my office upon which I, for some time now, have owed a response - it is one of those files that languishes on my desk - to review generally the LPS contractual arrangements in some respects of which we think it is not operating fairly to Government, in respect of other services they do not think it is operating fairly to them and therefore we are going to sit down and look at the whole picture and they have proposals on which a response from Government is admittedly overdue. In that context the Government were not making any payments under this contract, this contract relating to land titles and electricity and indeed - this is item (g), we estimated nothing because we took the view that we were not paying them. During the course of the financial year they approached the Government and made a case that it was unfair, withholding payment completely suggested that they were at fault in the non-performance of the contract and they thought that this a harsh

view so we agreed to pay them half. In fact, that figure of £63,000 in the forecast outturn column should not be £63,000, they have not been paid £63,000, they have been paid £30,500. In the estimate it is £63,000 to provide for the possibility that this contractual review will result in the contract being activated either in its current or in a modified form but with the original degree of contractual payments from the Government. That is the position. No decisions have been made. It is not that we have terminated the contract. It is lying there, unperformed for a variety of reasons. LPS feel quite aggrieved about that situation because they say that they incurred expenditure in preparation for consummating this contract and that they have not had the income deriving from it so the situation is in a state of flux we are reviewing the entirety of their arrangements, we are considering proposals that they have put to us in that respect so the answer is no, the contract has not been terminated. No, it has not been performed but Government have made payment of half the amount due this year in response to the case that they made that they had incurred expenditure, renting additional office space, recruiting additional staff, decorating additional office space in preparation for servicing this contract and they have never had any revenue from it.

HON J C PEREZ:

Is the £30,500 related to any sort of performance because on previous years there was a very low performance but there was one and I remind the Chief Minister that I did put a question at Question Time on how much arrears had been collected in the two periods and I still have not got the answer. Have those arrears been collected by Land Property Services or not and are they shown as income as being collected by Lyonnaise in page 4?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

In 1997/98 in arrears to the nearest thousand, they collected £82,000.

HON J C PEREZ:

I gave the Government that figure in my speech. I am interested in the last financial year.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

The figure for this financial year is £62,000 or thereabouts.

HON J C PEREZ:

Is that shown as income to Lyonnaise des Eaux in the front of the estimates because here it says, "Collected by Lyonnaise des Eaux"?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Yes, all electricity arrears, when they are collected will eventually be passed through Lyonnaise des Eaux.

HON J C PEREZ:

So it is shown here as if it were collected by Lyonnaise?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, they all have to be passed through Lyonnaise des Eaux because they have to record the fact that an arrears has been paid and is no longer arrears because they handle the billing system through electricity.

HON J J BOSSANO:

The explanation that he has given is in conflict with the information that has been provided.

HON CHIEF MINISTER:

What information?

HON J J BOSSANO:

We have just been told that no activity was performed and that they felt aggrieved that notwithstanding that they had not performed any activity, they had incurred expenses in painting the office, employing people and getting the place ready. We asked whether they had collected anything and we get told they have collected £62,000 and that the previous year they collected £82,000. How can we be told that there was no provision a year ago because no activity was performed and they had already collected £82,000 and been paid £59,000?

HON CHIEF MINISTER:

Mr Chairman, they were not being paid, if they were doing services they were not being paid for it, that is the point. I think obviously Lyonnaise must have started at some point actually passing sufficient information for them to collect at least that much of arrears. If I said that they were doing nothing obviously they were not doing nothing at all, they were doing that degree of electricity arrears collection.

HON J J BOSSANO:

Mr Chairman, with all due respect, the Chief Minister stands up and tells us an explanation that sounds perfectly plausible in that the contract was not performing, they made a case, they felt aggrieved, they had employed people who were not doing anything through no fault of their own but we have just been told they collected £82,000 the previous year. How can that be? They have been collecting, according to the Financial and Development Secretary, in the year beginning the 1st April 1997 and according to the published estimates they got paid the previous year £59,268 so it is not true.

HON CHIEF MINISTER:

Mr Chairman, I explained to the hon Member that this contract related to both electricity arrears and land titles register. The Financial and Development Secretary is just refreshing my memory to the effect that the expenditure in additional offices and decoration had been incurred in relation to the land titles part of the contract. But it is also true to say that until just a moment ago I thought that they were not doing anything under the electricity collection either. It appears that they have been doing it under the electricity collection but certainly they were not being paid for it.

HON J J BOSSANO:

The Chief Minister forgets that a year ago he knew that they were doing something but he decided they were not doing enough and we asked last year, "How is it that there is an estimated outturn in 1997/98" - which was shown last year - "and no provision for the forthcoming year?" and the explanation that he gave us was that not that they were doing nothing but that they were not doing enough a year ago. That is the explanation he gave us a year ago. Is it that apart from this, the amount here is purely payable in respect of electricity arrears, at least that is the indication in the text of the provision in the estimates so is it correct that the £35,000 is purely for electricity and has nothing to do with the lands registry?

HON CHIEF MINISTER:

Mr Chairman, they are certainly not doing land registry. They have got another contract in which they do the land registry type work that used to be done in the Crown Lands Department but the bit of the land registry that has always been done in the Supreme Court is still being done in the Supreme Court. Therefore they are certainly not doing any land of that sort of land registry type work, it just has not been transferred, it is still where it has always been.

HON J J BOSSANO:

I accept that explanation, that they are not doing that work, that was not my question. My question is, Mr Chairman, in the money we are being asked to vote for the forthcoming year, the £63,000, and in the forecast outturn of £30,000 – the corrected figure – the explanation is electricity arrears – LPS, so can I take it then that whatever aggrieved representations they may have this payment is just in respect of electricity arrears, is that right?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, the division of various parts of subhead 10 – Contracted Services that relate to Land Property Services do not exactly mirror individual contracts. In fact, Land Property Services has three contracts and the money is split over five subheads and we have made further subdivisions of their contract. The £60,000 is a Treasury estimated amount that the electricity arrears proportion of the third contract is worth.

HON J J BOSSANO:

But it is for the electricity arrears and not for any other service, is that correct?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

That is the Treasury's estimate of the position.

HON J J BOSSANO:

Then I take it that in respect of the actual figure for 1997/98, which is not an estimate, that would be the actual amount paid for collecting £82,000 of electricity arrears, is that accurate?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Again, it is a subdivision, it is what we estimated for that part of the contract that covers land titles as well as electricity arrears. It is the proportion we allocated to electricity arrears. Whether it is actually the amount is another matter.

HON J J BOSSANO:

But is there a relationship between what is collected and what they get paid?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Obviously not £1 for £1.

HON J J BOSSANO:

Is the Financial and Development Secretary in a position to say, if they have estimated it they must have had a formula for estimating it. Does the amount collected feature in that process of estimating how much is attributable to the collection of arrears?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I think the hon Member tests me but I recall that originally the division was done by actually working out the cost of the land titles side which was very easy to work out because it involved extra bodies, physical space and the residual amount was assigned to the electricity arrears. That is my recollection. If it turns out not to be the case I will let the hon Member know subsequently.

HON J J BOSSANO:

I interrupted the Chief Minister when he was about to give us further explanations on other aspects on this subject. I would not want to deprive him of the opportunity, Mr Chairman.

HON CHIEF MINISTER:

I was going to give the Hon Juan Carlos Perez some background on this electricity arrears issue that has so vexed him and the Leader of the Opposition. Mr Chairman, whilst I was hearing the hon Member it was not quite clear to the Government exactly what the point was of the whole exercise, was it simply a sort of number crunching 'this does not all quite fit exercise' or was there a point at the end of it? Therefore what I am going to do is to give the hon Member the figures as they have now been confirmed to me. The arrears at the start of last year stood at £5,003,000. The billing during the year was £9,300,000, that totalled £14,303,000 – adding arrears to billing; in other words, collectibles of which £9 million was collected leaving arrears at the end of the year of £5.3 million. Last year I said that we were raising the estimate by £1 million mainly due to the expectation of better arrears collection. In fact it was both that and an estimated slight increase in billing. The billing appears to have risen by about £300,000. Hon Members have to bear in mind that we, as receivers of the revenue, cannot actually differentiate between current and arrears collections by Lyonnaise des Eaux. They collect monies paid into their office and then it gets passed *[Interruption]* I realise I am not addressing any particular point, I have just tried to set out a set of agreed facts upon which we can then discuss this issue. The Central Arrears Unit, which is separate to Lyonnaise des Eaux or LPS for that matter, collected £372,000 in respect of that same period. LPS collected about £62,000. In the context of those facts perhaps the hon Member can put to us again what is the issue that concerns him quite apart from any inconsistency between figures and answers.

HON J C PEREZ:

It is a bit clearer now, Mr Chairman, given that we now have the total amount of arrears collected for the year which is what would give us the right picture. The estimates have been misleading in that it refers to collections by Lyonnaise and one would take that collections by Lyonnaise are the collections over this last financial year by Lyonnaise which does not include arrears, it is collections

in the current year. What now seems to have happened is that it is a bit of both; it is a bit of Lyonnaise having been more successful of collecting a greater proportion of the billing than in other years and therefore leaving less arrears behind during the year and a greater amount of arrears being collected through the efforts of the Central Arrears Unit which was an equation which has not appeared either in last year's budget or in this year's budget because it is all shown by Lyonnaise. The only thing that was odd is that the figure we asked in August of the amount collected there was already an increase in arrears for this financial year of £300,000 and that taken as an indicator would have created the same liability in new arrears as other years where one would have finished up with nearly £1 million in arrears again but there seems to have been a greater effort made between August and March to collect a greater proportion of the billing of this year and then for the result of Lyonnaise was much better than what that figure indicated. That seems to be the case but really what clarifies the situation a bit better is the figure of the Central Arrears Unit which was not mentioned by anyone last year, has not been mentioned this year and we have only been looking at the figure of Land Property Services and the figure of Lyonnaise without having an indication that the Central Arrears Unit was also collecting electricity. By the way, Mr Chairman, it seems odd to me that the information by Lyonnaise should be available to the Central Arrears Unit and not to Land Property Services who have the contract.

HON CHIEF MINISTER:

It does not work quite like that. The hon Member, for example, has not asked in what circumstances is the Central Arrears Unit find itself collecting electricity charges. It is usually incidental. When the Government do an agreement to collect when somebody comes to do a settlement on rates or a settlement on any arrears then the Central Arrears Unit staff go to whoever Lyonnaise and say, "How much does this person owe in electricity?" and extracts that way the information on a specific case by case basis and then includes it in a global municipal charges arrears agreement. That is how the Central Arrears Unit

comes to be dealing with electricity at all. As to what the hon Member said, I do not know whether it is still the position that there is difficulty in communication between Lyonnaise and LPS or whether the delay now is just the fact that we are sitting on their contractual proposals.

HON J J BOSSANO:

Can I just get confirmation on one thing, Mr Chairman. In the light of this information, assuming the answer given in September was accurate as to the figure in August, it means that the increase in arrears to £5.3 million was already there last August and that in fact there has been no movement since then, is that correct?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, in the light of the discussion that has taken place on this point, I am surmising as to whether there is a lag in that figure that was given up to the end of August because the information is being posted from Lyonnaise des Eaux and then transferred into the Government's books. There could have been a time lag and we are only getting what we thought was six months and was in fact five months.

Subhead 10 – Contracted Services was agreed to and stood part of the Bill.

Subheads 11 to 13 were agreed to and stood part of the Bill.

The House recessed at 10.15 pm.

The House resumed at 10.33 pm.

Head 9-C – Customs

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

Subhead 4 – Operational Expenses

HON J C PEREZ:

Mr Chairman, I notice that the Gibtel Radio Communication System there is a greater chunk of the expense in Customs than there is in other departments. Is that because they have got more terminals, is that it?

HON CHIEF MINISTER:

Yes, it is the provision which relates to the number of connections and the number of people involved.

Subhead 4 – Operational Expenses was agreed to and stood part of the Bill.

Head 9-D – Income Tax

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

Subhead 3 – Office Expenses

HON J J BOSSANO:

Mr Chairman, what is the explanation for the increase in the printing and stationery from £18,000 to £30,000?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I think the provision is for printing new tax tables.

Subhead 3 – Office Expenses was agreed to and stood part of the Bill.

Subhead 4 was agreed to and stood part of the Bill.

Subhead 5 – Professional Fees

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, with your indulgence, if I could just point out to Opposition Members there is a difference of £1 and this is a Head where it applies, in fact if we were to add up that Head in the actual column it should come to £743,626 and not £743,625. In the actual columns of some other Heads there is sometimes a £1 difference and we will correct all those in the final approved version. I say this in case someone goes to the length of checking every single actual figure in the draft against the approved version.

HON J J BOSSANO:

Now that he has suggested it I think I will check it, Mr Chairman.

Subhead 5 – Professional Fees was agreed to and stood part of the Bill.

HEAD 10 - JUDICIARY

Head 10-A – Supreme Court

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

Subhead 4 – Operational Expenses

HON A J ISOLA:

Mr Chairman, I see recording equipment - £2,000, is that for a sound system in the Supreme Court to record the proceedings?

HON CHIEF MINISTER:

It relates to the maintenance contract for the court's equipment not for the actual purchase of new equipment.

HON A J ISOLA:

My understanding is that there is not any recording equipment. I imagine that is the microphones that are used then?

MR CHAIRMAN:

There was in my days.

HON CHIEF MINISTER:

The hon Member must go to court more often.

HON J J BOSSANO:

The Law Reports Production, Mr Chairman, are these the new laws of Gibraltar which have been tabled in the House?

HON CHIEF MINISTER:

The Law Reports Production, Mr Chairman, refers to a series where decided cases are reported, nothing to do with statute law. It relates to the editing and publication in bound books of the judgements of the Judges of the Supreme Court and the Court of Appeal in cases. In other words, it is our common law reports as opposed to statute law.

Subhead 4 – Operational Expenses was agreed to and stood part of the Bill.

Head 10-B – Magistrates and Coroners Court

Subheads 1 to 4 were agreed to and stood part of the Bill.

Head 10-C – Law Officers

Subheads 1 to 4 were agreed to and stood part of the Bill.

Subhead 5 – Private Sector Prosecution Fees

HON J J BOSSANO:

Mr Chairman, in the previous Head where there was a very substantial increase in the outturn compared to the original one, there is a note that says that the Private Sector Legal Fees – Civil which is shown here as £60,000 outturn for the previous year is now shown under Head 8A – Secretariat, subhead 12. When I asked about the outturn I was told this was a number of civil cases. However, in the Consolidated Fund Statement of Reallocations approved by the Financial and Development Secretary which has been tabled in the House, the explanation that is given for the private sector is for legal advice in the Secretariat is special legal advice mainly telecommunications.

HON CHIEF MINISTER:

It includes both litigation and commercial advice civil.

HON J J BOSSANO:

Given that it is £250,000 for legal advice mainly telecommunications, previously when I asked about the.....

HON CHIEF MINISTER:

Mr Chairman, was that not to do with drafting? It was in drafting telecommunications which is a separate subhead. There is a subhead for drafting and there was another subhead for legal fees. As I recall it was mainly telecommunications in respect to the drafting figure which is true. The Government's bill, having created a more expensive structure in-house in the Legislation Support Unit, the one item where we are still spending significant sums of money in private sector drafting is in the telecommunications directives and bills. Indeed, I cannot think of what telecommunications advice other than drafting. The only telecommunications legal advice that we are getting, as opposed

to drafting, relates to the possible mergers and some of the satellite commercial arrangements.

Subhead 5 – Private Sector Prosecution Fees was agreed to and stood part of the Bill.

Subhead 6 was agreed to and stood part of the Bill.

HEAD 11 – POLICE

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

Subhead 4 – Operational Expenses

HON J C PEREZ:

Taking the opportunity that there is also part of the Gibtel radio link there, is this the initial cost of introducing it and is there an expectancy that it is going to be a recurring item or will the recurring cost be smaller than the vote that is there?

HON CHIEF MINISTER:

Mr Chairman, this is a recurrent cost. Gibtel makes a very substantial investment in the system and this is for the service provision and it includes the certain number of minutes used.

HON J C PEREZ:

The capital cost is provided by Gibtel and then it services the department for a fee?

HON CHIEF MINISTER:

Yes.

Subhead 4 – Operational Expenses was agreed to and stood part of the Bill.

Subheads 5 to 7 were agreed to and stood part of the Bill.

HEAD 12 – HOUSE OF ASSEMBLY

Subheads 1 to 8 were agreed to and stood part of the Bill.

HEAD 13 – PRINCIPAL AUDITOR

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

HEAD 14 – SUPPLEMENTARY PROVISION

Subhead 1(a) – Pay Settlements

HON J J BOSSANO:

Mr Chairman, last year I asked about the provision in the estimates for 1998/99 compared to the preceding year's estimate and the explanation given was that there were arrears for two years, Senior Officers for 1996 and the GGCA for 1997. Of the £1.5 million that was provided what is the position as regards the amount that has been used to meet pay settlements?

HON CHIEF MINISTER:

The information is available by examining all the virements statements.

HON J J BOSSANO:

Can they confirm that there are no further virement statements to come?

HON CHIEF MINISTER:

I have been told that there are still some to come, that some departments are still to submit virement statements for emolument pay rises.

HON J J BOSSANO:

So I cannot find the information from the virement statements?

HON CHIEF MINISTER:

The hon Member can find the position to date from the virement statements but not the total annual position.

HON J J BOSSANO:

But given the fact that we are now talking about money that is going to be debited to the 31st March irrespective of the fact that we are in June.

HON CHIEF MINISTER:

I am advised, Mr Chairman, that the Accountant General has already put out what I think he calls 'the final warning'. I think he has already put out the statement to Controlling Officers that there is now a deadline, that by the 15th June is the last day by which bookings will be allowed for the financial year ended 31st March 1999. So by the 15th June we will have what is missing of the information that the hon Member wants and the Financial and Development Secretary can certainly provide it to him.

HON J J BOSSANO:

Really what I am interested in knowing is whether the whole of the £1.5 million has been used or considerably less. From what I have seen of the virements there does not seem to be the amount transferred anywhere near that total.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

The hon Member tests my memory at a late hour in the day. As I recall in pay settlements we have actually used about £600,000 and all the other money for pay settlements has been managed to be funded from within the various virements. I think there will be a little bit more but I cannot be sure how much. In terms of that total Head we will, if one adds up all the departments outturns and see those that have gone over, we are planning to use all the supplementary funding Head so we will have to have a virement from what we do not use of pay settlements into supplementary funding. I would suspect that the final virements, I would hope, will be able to be laid in the next House.

Subhead 1(a) – Pay Settlements was agreed to and stood part of the Bill.

Subhead 1(b) – Supplementary Funding

HON J J BOSSANO:

On supplementary funding when I asked last year why there was an increase I was given the explanation of the arrears for the £500,000 increase in pay settlements and in the other one where there was also £500,000 what the Chief Minister said, “The Government envisage having to spend more on training than is available in direct revenue in the Gibraltar Development Corporation”. That is what I was told, that they put in £500,000 because they did not think there was enough in the Gibraltar Development Corporation where they have just clawed back £750,000. Obviously the £500,000 has not been used for training and if we are being told that, in fact, all of it is going to be needed, there must be some substantial requirement somewhere else.

HON CHIEF MINISTER:

In the Health Authority. The big user of supplementary provision is the Government’s Consolidated Fund contribution to the Health Authority notwithstanding that the hon Member who is absent, the

Hon Mari Montegriffo, says that we are not spending enough on it. Already they have had £450,000 from virements and I think we expect it to turn out at nearly £1 million. Almost £1.2 million will be the difference between the outturn and the estimate for the Consolidated Fund payment to the Health Authority.

HON J J BOSSANO:

This is, of course, Mr Chairman, because last year in the estimates they reduced the amount by £1.1 million from the actual for 1997/98. If the Chief Minister looks at page 116 he will see that it went down from £4.5 million to £3.6 million and now the outturn is shown as £4.8 million which is the £1.1 million he is talking about.

HON CHIEF MINISTER:

Yes, that is the £1.2 million I am talking about.

HON J J BOSSANO:

The Chief Minister also said last year that in that £500,000, apart from extra spending on training, there was a particular project which he did not want to give information about for commercial reasons because they were in the middle of negotiations. We have not heard anything more about the £500,000 or the project.

HON CHIEF MINISTER:

This is not training, he did not use the word training did he?

HON J J BOSSANO:

No, I am saying when I asked what the £500,000 was there for I was told it was there for two things: (1) to top up the training in the expectation that the amount they had put in the Gibraltar Development Corporation would not be enough, and (2) the balance was for something else.

HON CHIEF MINISTER:

That something else has not yet happened but is imminent. [*HON J C PEREZ: It is still secret.*] Well, I suspect that Opposition Members know exactly what it is. It is interesting and it would not be appropriate to bring it to the House just yet but it relates to the restructuring of a long-established institution in Gibraltar.

HON J J BOSSANO:

Mr Chairman, given that we are being asked to vote £1.5 million in supplementary funding this year, can I then ask if since the money has not been used in the last year I take it, if I am right that the money has not been used in the last year then there is no extra provision this year for that particular project then because the £1.5 million is the sort of normal supplementary funding that is provided.

HON CHIEF MINISTER:

That is true, there is an expectation which I always regard as somewhat forlorn to keep a tighter grip on expenditure in departments in the hope of reducing the recourse that there is to supplementary funding provisions. We are trying to impose discipline on departments and therefore we do not want to send them signals that there are too much funds available because everybody knows, first of all, they are kept on a reasonably tight grip from the Treasury but once we have spent the supplementary funding provisions the next recourse is a Supplementary Appropriation Bill and it serves to keep a lid on it. If we were to provide there £3 million or £4 million, the more we provide there the more laxity that there is in budgetary control because of the ease of access to unspecific devoted funds. It is not a particularly good attitude to encourage but yes, if we do spend this £500,000 on this project and we do not curtail budget surplus over estimates expenditure then we will find ourselves short as we would have done this year had the £500,000 come in for this project this year and in those circumstances we would have to do

what the hon Members I remember – I have only been in the House for one Supplementary Appropriation Bill, I think it was some time in 1995 when they came for an extra £1 million or something. I am just being reminded that we did one as well.

HON J J BOSSANO:

Mr Chairman, we are not against providing supplementary funding. We think in a budget of this size it is not an unreasonable amount of money to have there to deal with fluctuations and we have always accepted that estimates at the beginning of the year, however accurate one makes them, cannot hit the nail on the head. The point that I am making is that the normal amount is £1.5 million and that last year it was increased because there was a specific additional commitment. If that specific additional commitment was not entered into in the last financial year and is now entered over in this year then the fact that it is not reflected there means that one has actually decreased the supplementary to £1 million, the normal supplementary shall we say. Is that the case?

HON CHIEF MINISTER:

That is the inevitable analysis of the figures on the page. Yes, I think hon Members always used to have £2 million in their budget towards the end of the last budget, £1 million for pay settlements and £1 million for supplementary funding. I agree, we could find ourselves short in this Head.

Subhead 1(b) – Supplementary Funding was agreed to and stood part of the Bill.

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

Clause 3 – Consolidated Fund Contributions

HEAD 15 – CONTRIBUTIONS FROM CONSOLIDATED FUND – RESERVE

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

Subhead 2 – Resettlement Scheme

HON J J BOSSANO:

Mr Chairman, the resettlement scheme that we are being asked to vote £100,000 for is what?

HON CHIEF MINISTER:

It is really what I explained to the hon Member earlier. We never actually said publicly that the scheme is closed so I suppose if somebody, they are unlikely to now given that we have now opened their access up to the labour market but theoretically people could still come up from the guys that registered as interested in taking it up and who had not come to collect their cheques, theoretically it is still open for them to claim. I suppose at some point, I query that it should not have happened already, at some point we shall have to formally announce that the scheme is closed in which case this subhead will become redundant. It is not that we envisage spending £100,000 on resettlement, we have not had a taker for months and months and months now. It may be redundant already.

Subhead 2 – Resettlement Schemes was agreed to and stood part of the Bill.

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

Clause 4 – Improvement and Development Fund

HEAD 101 – HOUSING

Subhead 1 – Major Remedial Works and Repairs to Housing Stock

HON J L BALDACHINO:

Mr Chairman, the Government estimated in 1998/99 £1.3 million, can we have an explanation why the forecast outturn has only been £653,000?

HON J J NETTO:

No, I am sorry, I cannot give an answer at the moment.

HON CHIEF MINISTER:

Not a specific answer, Mr Chairman. The fact is that there is saturation in the construction industry and even with the Buildings and Works working flat out and Government contracts in hand in the private sector, it still takes longer than we anticipate to actually get work done. Either there is a blockage at the design stage within Support Services, then there is a blockage in the tendering process, it just takes much longer than we envisage it should take to get on with doing these houses. So a lot of it has just been carried forward into the current year's estimate in the hope that there can be an acceleration in the rate of doing of works. But I agree, it is slow and laborious, much more so than I would have thought necessary.

HON J J NETTO:

Perhaps I could add to that in the same vein, that some of the actual buildings themselves which were going to be contracted out and was envisaged in the previous financial year has not been carried out through delays and that is part of the reason for that as well.

HON J L BALDACHINO:

So what has been spent is not only on private contractors, there is also an element there which is work that has been done by the Buildings and Works workforce is it?

HON J J NETTO:

No.

HON J L BALDCHINO:

Then what they are estimating now which is £2,023,000 is not what they expected to spend in this financial year?

HON CHIEF MINISTER:

We hope so especially given the fact that it is election year. Mr Chairman, there is a programme of works on buildings and an order in which we would like to see the work done. We would like to see it all done and it remains to be seen that the system just is able to get round to doing all the work but there is a fixed programme of specific buildings and a specific order with specific works, some of it designed just waiting to go out to tender, others not yet designed and waiting to be designed in the pipeline in the Surveyor's office or in the Quantity Surveyor's office or in the Architect's office.

HON J J BOSSANO:

Mr Chairman, first of all, to come up with the explanation that it is just that there is saturation in the market and that they cannot cope with the work, well it does not seem very reasonable that if the House votes £1.3 million for repairs to the housing stock and the saturation in the market only permits £600,000 worth of work to be done that the House should be asked to then provide £2 million the following year which is three times the amount that has been spent in the last 12 months.

HON CHIEF MINISTER:

Except that it is really the same, as I said I think it was during my contribution to the Second Reading, that many of the properties now on the programme are in the pipeline, some of them are in hand. The buildings at Calpe, Willis, Macfarlane, some are about to start; the contract for one is about to be allocated having already gone through the tender process. So where there are projects that have gone through all that process of delay and at the start of the financial year they start to kick in hard in expenditure terms, we have really got the rest of the financial year to get additional projects pushed along the conveyor belt, I fully expect that we will get near the £2 million on this vote this year. It may not get to the whole £2 million but I think we will get substantially there because many of them are either now in progress or contractors are about to move into the site or they have already been designed and are just about to go out to tender. In other words, it is much more likely to happen than last year.

Subhead 1 – Major Remedial Works and Repairs to Housing Stock was agreed to and stood part of the Bill.

Subhead 2 – Edinburgh House Refurbishment

HON J L BALDACHINO:

In the forecast outturn of the £858,000 how much of that was paid for the security contract?

HON CHIEF MINISTER:

Mr Chairman, the hon Member is obviously interested in that particular bit of information, we will let him know. It is not a lot, it is not a particularly valuable contract I think it is a couple of thousand pounds a week or something but I will get the information to the hon Member.

HON J L BALDACHINO:

Mr Chairman, seeing that the Government have got extra flats in Edinburgh House which have been transferred over from the MOD, will the sum now also cover the refurbishment of those two blocks?

HON CHIEF MINISTER:

Yes, it does.

Subhead 2 – Edinburgh House Refurbishment was agreed to and stood part of the Bill.

Subhead 3 – Harbour Views

HON J J BOSSANO:

Mr Chairman, the amount last year was £100,000 and the expenditure is zero and then we have got £1 million this year and last year we had an estimate for 1997/98 of £10 million and a balance to complete of £9.9 million and this time there is no balance to complete. What is the rationale of these very remarkable changes?

HON CHIEF MINSITER:

Well, Mr chairman, last year the estimate of £100,000 was real token, a token token. This year it is not quite a token, works have started as the hon Member knows in Harbour Views in a big way on the first four blocks.

HON J J BOSSANO:

Surely they started before the end of the last financial year?

HON CHIEF MINISTER:

Yes but this is the part of the explanation that I am just coming to. This £1 million is a guesstimate of the monies that we will need beyond what we have got left in the companies. I do not know if the hon Member recalls but I explained to him last time we discussed this that it was the Government's intention to use on Harbour Views first the monies left in the Company – I think most of it is in Residential Property Company, there is one that perhaps has the lion's share of the monies, £3 million or £3.5 million or whatever is left there. This is where we think the contractor will get to by the end of this financial year; in other words, what is left available in the Company plus this £1 million but this might be short. There is a real possibility that we will have to come back to this House for supplementary appropriation in relation to Harbour Views because the project is now at a stage where after a long delay whilst they got to grips with certain design difficulties relating to the remedial works, all those are now about to be resolved and it may be possible for the contractor to accelerate and the contract for the other 18 blocks will be able to be adjudicated and it is very difficult for us to know how much expenditure will kick in before the 31st March 2000. So this £1 million is on the basis of the current situation. Our best estimate of the monies that we will need for Harbour Views this year over and above the balance left in the Company.

HON J J BOSSANO:

But when the estimate was produced for last year's expenditure estimate the cost of the project was estimated at £10 million with a balance to complete of £9.9 million and the implication of the way it has been presented this year is that there is no balance to complete.

HON CHIEF MINISTER:

And indeed there is not, Mr Chairman, we have not yet got an agreed final design for the first four blocks on which the contractor is already on site, it is being designed as they go along and until those designs are completed we will not have an agreed set of specifications and designs for the other 18 blocks. Until there is not an agreed design and specification it is just not possible to put a price tag on these works. I am told by those who think they are knowledgeable in these matters and by all accounts they appear to be, that this project is going to come – well, I should not mention the figure because potential bidders may be listening for the contract and there is no point in putting..... [HON J J BOSSANO: *At this time of night?*] At this time of night, but it will get reported in the Chronicle or somewhere. Suffice it to say, Mr Chairman, that the balance to complete is unknown. There is no balance to complete at the moment because we are assuming that the £1 million plus the amount of the Company will be enough to take us through to the only part of the project which is presently under contract which is the first four blocks and therefore in respect of the project being the project of the first four blocks, we do not think that there is a balance to complete. We think that this £1 million will be enough to carry us across. Then there are the other 18 blocks.

HON J J BOSSANO:

That sounds fine except that it does not explain how it was that 12 months ago they were able to come up with a figure of £10 million.

HON CHIEF MINISTER:

Well, it was just a provision, Mr Chairman, it was not a figure that we could come up with. I think that figure has been there almost from our first budget. It was a very early estimate of what the project might cost. Would the hon Member agree to continue this conversation with me in the ante room?

HON J J BOSSANO:

No problem.

Subhead 3 – Harbour Views was agreed to and stood part of the Bill.

Subhead 4 – New Housing for Senior Citizens

HON J L BALDACHINO:

Mr Chairman, I presume by seeing that they are estimating for £392,000 for this year and no balance to complete that the project will be finished during this financial year, is that correct?

HON CHIEF MINISTER:

It is indeed, yes.

HON J L BALDACHINO:

In answer to questions I was told that extra things had been done which could have increased the project's initial cost. Do they know by how much it has been increased?

HON CHIEF MINISTER:

The hon Member may be referring to Edinburgh House where there were extra things, in this project the only thing extra from the original contract which is not a major expenditure is the rehabilitation of a little spare bit of land left at the end of a plot into

a sort of garden and bench area. I do not think it relates to the construction project as such.

Subhead 4 – New Housing for Senior Citizens was agreed to and stood part of the Bill.

Subhead 5 – Housing Consultants Fees

HON J J BOSSANO:

Mr Chairman, can we have an explanation of the Housing Consultants Fees. I see that there was £50,000 put last year and in fact they have spent £20,000 of the £50,000 and they are putting another £50,000 this year which brings the cost up to £70,000.

HON J J NETTO:

Yes, I can give an explanation, in fact, I think I already have in my speech on the Second Reading. Hon Members will recall that I said that resources in-house in Buildings and Works to deal with contracts there is already one HPTO which basically all he does is do the preparatory work, the contract and the monitoring. What I said in my speech was that whenever extra resources are needed in order to carry out the commitments within Head 101, the first port of call is Support Services and because they have other priorities we then have to contract out consultants which I have given in answers to questions already. If one relates that to the explanation given in the forecast outturn for Head 101, subhead (1), in relation to the delays of some of the works that is the reason why the forecast outturn is £20,000 but we do envisage, in the provisions that we have for 1999/2000, £50,000 is that part will be coming out from those works which will be in a greater number and we will be hoping to do much of the contracts in Head 101(1) so that is the reason for the forecast and why we have gone back to £50,000.

HON J J BOSSANO:

What is it that these fees are payable for? What is it that is involved?

HON CHIEF MINISTER:

I suppose it is a misnomer, it should not be Housing Consultants Fees, it should just be Consultants Fees in the Housing Head. This is not consultancy in relation to housing, this is consultancy fees in respect of the design element, the pre-construction work element of in-house work. Just as the Government contracts out the design work for work that we subsequently put out to contract, this is to enable the Buildings and Works Department to contract in professional services in relation to the design and project supervision - quantity surveying, architectural works, in respect of contracts done in-house in the Buildings and Works Department.

HON J J BOSSANO:

I am afraid then, Mr Chairman, he has just totally contradicted the explanation given by the Minister because the Minister has told us that if we look at Head 101(1) where he said there was no direct labour, well are these consultants doing the work for either direct labour which is what we have just been told or for Head 101(1) where there is no direct labour which is what we were told two minutes ago? Which is it?

HON J J NETTO:

No, this is not for direct labour.

HON J J BOSSANO:

The Chief Minister has just said that it is for direct labour, Mr Chairman, and the Minister has been nodding. I know the Minister is used to nodding to whatever the Chief Minister says but he has just contradicted the Minister and he keeps saying yes with his head.

HON J L BALDACHINO:

Mr Chairman, why has he not used the remaining £30,000 that are there?

HON CHIEF MINISTER:

Where, Mr Chairman?

HON J L BALDACHINO:

In the original vote.

HON CHIEF MINISTER:

Used it for what?

HON J L BALDACHINO:

The estimate for 1998/99 was £50,000; the forecast outturn has only been £20,000, if that was the case and the Minister had the money, why has he not spent the £30,000 and maybe more projects could have been done in subhead (1)?

HON CHIEF MINISTER:

It does not quite work like that, Mr Chairman. The fact of the matter is that delays are not just in relation to the programmes of the works that relate to this subhead. The delays are not just in design services and it is not just in contract supervision. It is also in contracting documents and the tender process and in all sorts of other things. But going back to the previous point, Mr Chairman, this contains both. For example, there are projects that are being led through the Support Services Department and there are projects that are being led through the Buildings and Works Department. For example, the design responsibility for the Glacis repavement project is being done through the Buildings and Works Department but with access for the Buildings and Works

management to private practice architects, designers and quantity surveyors. So it relates to both and the inconsistency between us in that we were giving the impression that it was exclusively for one or exclusively for the other and this is the issue that I think was that we were misleading the hon Member.

Subhead 5 – Consultants Fees was agreed to and stood part of the Bill.

HEAD 102 – SCHOOLS, YOUTH AND CULTURAL FACILITIES

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

Subhead 2 – School Buildings – St Anne's and Westside

HON J J BOSSANO:

Can I invite the Minister to explain how it is, here we have got a figure where the actual for 1997/98 was £612,086, that suggests an on-going project, one would not expect in an on-going project that there should be an estimate of £450,000 and an actual of £29,000.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

The heading Schools Buildings – St Anne's and Westside, is for the projects we are doing this year. In fact, the £612,000 actual related primarily to Bishop Fitzgerald and Governor's Meadow which were the projects in that particular year.

HON J J BOSSANO:

So in fact then, Mr Chairman, the £450,000 voted last year for St Anne's and Westside it is still a huge difference of £29,000.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

What was voted last year, the £450,000 was primarily for St Anne's and that project has not progressed and there is a plan to progress in the current financial year.

HON CHIEF MINISTER:

And the reason for that, Mr Chairman, is that we had to negotiate with the owner of the adjoining plot of land to get access to some of it; the triangle where the old Mediterranean Rowing Club was which belongs to the Marina, in the end they were very good about it.

Subhead 2 – School Buildings – St Anne's and Westside was agreed to and stood part of the Bill.

Subheads 3 to 5 were agreed to and stood part of the Bill.

HEAD 103 – TOURISM AND TRANSPORT

Tourism

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

Subhead 2 – Enhancement of Tourist Entry Points

HON J J BOSSANO:

Mr Chairman, there is a very large increase in the provision for this forthcoming year, £750,000 on this particular item. Given what has been said about the problems in delays in other things, how realistic is this?

HON J J HOLLIDAY:

Mr Chairman, this covers the new coach terminal, not just the building but the extension covering the car park all the way up to

the roundabout in North Mole Avenue and that should be completed during the course of this year. In fact, the project has already started and this is a continuation of the project.

HON J J BOSSANO:

Is it realistic?

HON CHIEF MINISTER:

Yes, it is completely realistic. The contractors are on site, there is a contract, there is a completion date. This is one of the ones that is now running by itself and no longer requires any input from the Government except the vacation of one more tenant who is still on the site.

Subhead 2 – Enhancement of Tourist Entry Points was agreed to and stood part of the Bill.

Subhead 3 – Airlines Assistance Scheme

HON J J BOSSANO:

Mr Chairman, is the Airlines Assistance Scheme now an annually recurrent thing?

HON J J HOLLIDAY:

The Airlines Assistance Scheme is composed of two different parts. In the figure of £325,000 includes our commitment to Monarch for the third year of their contract and the equivalent sum to GB Airways which we agreed we would pay penny for penny, in other words, whatever we gave Monarch we would give to GB Airways during the course of the three years. It also covers an incentive which I offered GB Airways and Monarch in order to increase the frequency on the London/Gibraltar route where any additional flights that they would fly to Gibraltar they would actually get an incentive for that. Monarch did take up the offer and has increased their scheduled service from four to six flights

and from three to five flights in the winter and obviously that has increased capacity considerably. GB Airways have not taken up the offer yet. There is provision also in that budget because I am in negotiations with other airlines as I have said in the House and a provision has been made in case we are able to put a programme in place so that there is an element of funds available to airlines to operate the route.

HON J J BOSSANO:

Can the Minister explain the fact that if we look at the estimate last year the 1997/98 estimate £365,000 and the outturn £176,000; the 1998/99 estimate was £210,000 and the outturn £134,000. Given the fact that this is an agreement which is pre-done and lasts over a number of years, how is it that the results do not match the original estimate?

HON J J HOLLIDAY:

There is an element of arrears in all this programme because money is actually paid to them at the end of every quarter when they submit an invoice and there is a fixed amount agreed with them and then an additional part of the funding is actually on the frequency of the route. In other words, it is not just based on a fixed sum irrespective of what they do, they are actually based on the frequency of landing and therefore there is an element of provision there so that the figure is not exactly as per what they require apart from the element of arrears which I have explained where the airlines are producing invoices three or six months behind their actual period in question.

HON J J BOSSANO:

I could understand that there might be arrears in the first year which show up in the second but, in fact, the second year is less than the first; it is £134,000 as compared to £176,000. Is it that there is money in the expectation of arrears coming in in the next 12 months?

HON J J HOLLIDAY:

It is less actually because in the first year, and I do not have the figures here in front of me but there may be a figure that whereas in the first year the airline was offered an assistance of £50,000, in the second year the assistance is actually £30,000 and in the third year it is £10,000. So it is a reducing scale as the three years progress, the third year started last month in May and we are running on the third year now.

HON J J BOSSANO:

I can understand that if we were talking about the amount budgeted because then on the reducing scale one is budgeting less but I am talking about the actual outturns. Presumably if there is a provision and it is £50,000 in the first year; £30,000 in the second I could understand that the provision should be going down. What I am questioning is why should the result be below the provision because that, surely, is not what was expected. When the House was asked to vote the money it was on the basis that the Minister is saying that there would be less money required in the following year but what was actually paid out, is it that the actual number of flights that were put were not what was originally assumed would be the case when the original figure was brought?

HON J J HOLLIDAY:

No, Mr Chairman, the commitment entered with Monarch has been fulfilled and the agreement we had with GB Airways was that we would pay the same amount to them as we would pay Monarch so long as they maintained the level of flights on the route and that has been honoured all along but there has not been any provision for that. I think the element of the actual outturn is due to arrears more than to anything, but I could not confirm this to the hon Member, I am quite happy to look at that for him but my views are that the figures involved are in respect of the fact that invoices are not being presented for payment at the end of each quarter and therefore they are dragging. I remember

distinctly at the end of this financial year I contacted the airlines through my Principal Secretary and asked them to submit invoices because we were coming up to the financial year.

HON J J BOSSANO:

They do not seem to be needing the subsidy very much, Mr Chairman, if they are not in such a hurry to collect the money.

HON J J HOLLIDAY:

That may be correct, I do not know. The reality is that they do claim they do need the subsidy and it was a contract that we entered in 1996 and has been maintained through to the end of May next year.

HON J J BOSSANO:

Is the provision this year then the last chunk of that?

HON J J HOLLIDAY:

Yes, it is the last chunk of the initial three year contract but as I have said, what I did this year, basically the airlines were talking to us as to what would happen after the three year contract was over and I said that the Government were not willing to give incentives unless they put additional flights on the route and so what we did was that we offered them an incentive for any additional flight they put on the route and not for existing operations. In other words, if Monarch were flying four times a week in the summer, what we did was we said, "you were willing to put on a daily flight" which is what they are trying to do even though they are flying six times a week at the moment but due to availability of aircraft they have not been able to meet that, I was willing to give them assistance on the additional two flights but not on the existing four flights because otherwise I felt that we would just not give them the incentive to actually promote the route and increase availability of seats which, at the end of the day, is what the Government are looking for.

HON A J ISOLA:

The Minister said that the original agreement was whatever Monarch had GB Airways would get and in respect of the increased flights they would qualify for some more, I imagine, but only Monarch had taken the offer up because they had put more flights on and obviously they alone benefit from that increase.

HON J J HOLLIDAY:

No, not at all. Whoever is taken on will be given an incentive for that particular issue and that agreement only stands for that part of the incentive.

Subhead 3 – Airlines Assistance Scheme was agreed to and stood part of the Bill.

Subhead 4 was agreed to and stood part of the Bill.

Transport – Traffic

Subhead 5 – Refurbishment of Motor Vehicle Test Centre

HON J C PEREZ:

Mr Chairman, is this the refurbishment of the existing centre at Eastern Beach or has this got anything to do with the new contract for the new building?

HON J J HOLLIDAY:

This has to do with the new vehicle test centre in Eastern Beach.

HON J C PEREZ:

So it is not really the refurbishment of what is there, it is the building of the annex to what is there?

HON J J HOLLIDAY:

Yes, it is more accurately described as the hon Member has put it.

Subhead 5 – Refurbishment of Motor Vehicle Test Centre was agreed to and stood part of the Bill.

Subhead 6 was agreed to and stood part of the Bill.

Transport – Roads

Subhead 7 – Roads Construction and Resurfacing

HON J C PEREZ:

Mr Chairman, of the £2.5 million being provided this year, can the Minister say what chunk of that money is already committed on contracts which are on-going and already given?

HON CHIEF MINISTER:

Yes, £1.9 million plus another £400,000, that is £2.3 million.

HON J C PEREZ:

That is to say, that tenders are already out and the works have already commenced so we are really seeing not very much new here but on-going?

HON J J HOLLIDAY:

Well, Mr Chairman, during my presentation.....

HON J C PEREZ:

But we are talking about £200,000.

HON J J HOLLIDAY:

We are talking of Sir Herbert Miles Road that has already been signed and obviously is an on-going project.

HON J C PEREZ:

I am not asking the Minister and I heard his contribution and he gave us a list. I am saying that if there is £2.3 million committed to projects which are on-going, the difference between £2.2 million and £2.5 million is £300,000 and there is very little new, the rest is on-going.

HON CHIEF MINISTER:

No, it is not very little new, it is very little that will be started and finished during this financial year because they will start at the point during the financial year which will straddle the end of this financial year so that the completion costs will be in the next budget. *[HON J J BOSSANO: There is no balance to complete.]* There is no balance to complete because there are no specific projects but there will be at least one more major project started in the financial year and that is the Waterport Road. In other words, the continuation down from Customs House, so to speak, in front of Watergardens to Waterport roundabout. That project will start at some point during the financial year and my best recollection is that the total estimated cost is slightly more than the figure that the hon Member has mentioned as the balance left.

HON J J BOSSANO:

Mr Chairman, the figure of £2.5 million has got a footnote which shows that it includes the EU funding. So it was not included in the estimate for this particular subhead in last year that there was £1 million.

Subhead 7 – Roads Construction and Resurfacing was agreed to and stood part of the Bill.

Transport – Port

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

HEAD 104 – INFRASTRUCTURE AND CAPITAL WORKS

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

Subhead 2 – Government Buildings and Works

HON J J BOSSANO:

Mr Chairman, the £1.2 million on Government buildings, which Government buildings now need to have this kind of money spent on them?

HON CHIEF MINISTER:

No, Mr Chairman, there has been a tidying up of the subheads if he compares to past years. For example, although the hon Member is thinking in terms of work to Government offices and depots and things of that sort, it now includes much more capital major works to buildings that will be Government owned. For example, in that amount of £1.2 million there is the re-siting of Customs House; there is developments to Dr Giraldi Home; there is extensions of the London Office; there is the re-siting of the Royal Gibraltar Police Marine Section; there is expenditure related to the alternative arrangements for the Devil's Tower Road Workers' Hostel; there are works in relation to the Sergeants' Mess which are on-going. So it is not the traditional sort of run-of-the-mill works.

HON J J BOSSANO:

So it is not directly comparable to the £300,000 of last year's estimate?

HON CHIEF MINISTER:

No, it is not, we ought to perhaps have explained that.

Subhead 2 – Government Buildings and Works was agreed to and stood part of the Bill.

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

Subhead 4 – Consolidation and Printing of Laws

HON J J BOSSANO:

Mr Chairman, on the consolidation and printing of laws, has there been no expenditure in the last year, the forecast is nothing out of an estimate of £50,000?

HON CHIEF MINISTER:

No, there has been work under a heading of consultancy for the actual legal work done by the lawyer assisting but there has been no printing expenditure because the first of the supplements came out recently and obviously the expenditure has not fallen in the year. This is production costs rather than editing costs. What we have been paying for the last financial year is editing costs, the lawyer doing the work. This subhead relates to the actual publication costs, the printing, the binding and things of that sort, very expensive.

HON J J BOSSANO:

Mr Chairman, the original estimate was £50,000 and £110,000 to complete and now we have got £80,000 and £200,000 to complete which means really that the estimated cost has doubled between last year's budget and this year's budget. Is there an explanation for the fact that what is expected to cost is now twice as much?

HON CHIEF MINISTER:

No, Mr Chairman, except that now that they have done the first of these supplements which I think is the second because the first one was the 1984 one, the LSU must have reassessed its estimate of what the cost of this project will turn out to be. I must say I am horrified at the cost of this exercise.

Subhead 4 – Consolidation and Printing of Laws was agreed to and stood part of the Bill.

Subhead 5 – Renovation of St Bernard's Church – Loan

HON J L BALDACHINO:

Mr Chairman, is it that there has been no expenditure in this financial year because I live near the Church and I have seen that nearly, apart from just one part of the Church everything has been knocked down and works are going on there.

HON CHIEF MINISTER:

I have to say that my personal recollection was that we had sent the Church's solicitors a cheque but the Treasury people assure me that my recollection is mistaken and that, in fact, they have not drawn down against the facility available to them at the Treasury yet. Certainly I know what the hon Member says is correct, the works are at an advanced stage.

Subhead 5 – Renovation of St Bernard's Church – Loan was agreed to and stood part of the Bill.

Subhead 6 was agreed to and stood part of the Bill.

Subhead 7 – Equipment – including Asycuda

HON J J BOSSANO:

Mr Chairman, would the Minister be able to provide the information on the breakdown when he has spent £25,000 including Asycuda?

HON CHIEF MINISTER:

The breakdown of the £111,000?

HON J J BOSSANO:

No, what I am saying is, once the estimated £25,000 is spent on equipment including Asycuda, will the Minister be able to provide a breakdown of that figure.

HON CHIEF MINISTER:

Well, I would not promise him that, I do not know.

Subhead 7 – Equipment – including Asycuda was agreed to and stood part of the Bill.

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

Subhead 9 – Radio Communications

HON J C PEREZ:

This must be something separate to the Gibtel Communications for Essential Services, what is this?

HON CHIEF MINISTER:

The figure of £275,000 is the purchase of equipment in connection with the new system. The hon Member may recall that at Question Time I explained that Gibtel is making the investment in the central system – the computer, the installation, the base station, the networking but each user has to buy his own

handheld sets, the personal thing that is carried around by each officer. So Customs has to buy their own sets, the Police have to buy their own sets.

HON J C PEREZ:

The Chief Minister is contradicting what he said in Customs.

HON CHIEF MINISTER:

No, I am not contradicting what I said in Customs. What I said in Customs was that there was an annual recurring cost for just using the service and that is correct.

HON J C PEREZ:

And if he shows the annual recurring cost of Customs for using the service where is the capital cost of Customs and where is the recurring cost of the Police? This is being treated as a capital expenditure because it is in the I&D Fund. So the whole of the capital cost of everybody is in the Police vote?

HON CHIEF MINISTER:

In the I&D Fund. These are not Police votes.

HON J C PEREZ:

But it says Police.

HON CHIEF MINISTER:

Well, those are indicative, this is one Head – Infrastructure and Capital Works for the Government generally. It is true that it is broken up for convenience into groupings which are clustered under headings but this was one Head of expenditure, these are not individual Police Head or Customs Head. But I agree, it is confusingly put there under a heading which suggests that it all relates to the Police and it does not.

HON J J BOSSANO:

I take it that what he has just said is not true of the preceding subhead, that is to say, that the equipment including Asycuda is not a cluster of equipment for the rest of the Government and that the equipment – Chief Fire Officer - £103,000 is not that everybody is going to get bits of fire equipment but it is just the Fire Service?

HON CHIEF MINISTER:

The point I was trying to make is that this is not the Police vote rather like the Police have their own vote in the Consolidated Fund.

Subhead 9 – Radio Communications was agreed to and stood part of the Bill.

Subhead 10 – Refurbishment of Cemeteries

HON J C PEREZ:

May I ask because I recently had reason to be there, does anybody know what the patio outside the entrance is for? Is that a car park because everybody who went to the recent funeral that I went to was asking me what the patio was for and frankly I do not know what a patio outside the entrance is for unless it is for a car park?

HON CHIEF MINISTER:

It needs to be modified. I had a similar thought when I went to my last funeral. I think it will end up being a concourse. In other words, when people are waiting to go into the cemetery at the moment they stand along the road. At the moment it is going to be a car park and I think it is a bad idea, the entrance is too restricted, there are not enough spaces, by the time we have eliminated the access, in and out space, so I think it is going to be

modified to a concourse with trees and benches so that people can wait off-road rather than all over the road when the hearse arrives. There has been an error in concept there insofar in that project. If the hon Members wish to make that criticism we will take it on the chin.

HON J J BOSSANO:

Has there been no expenditure so far?

HON CHIEF MINISTER:

Apparently nothing has been paid for.

HON J J BOSSANO:

Is it being tendered, it looks as if it is being done by direct labour?

HON CHIEF MINISTER:

By tender.

Subhead 10 – Refurbishment of Cemeteries was agreed to and stood part of the Bill.

Subhead 11 – Storm Water Drains and Sewers Replacement

HON J C PEREZ:

Mr Chairman, given that in the recurrent expenditure only £40,000 was spent and there is a big chunk of money there and no money was spent at all of the £300,000, is the £169,000 a credible estimate for this year because we are talking about the Sewers Section again?

HON J J HOLLIDAY:

Yes. The reason why there was no expenditure last year was that it covered basically the storm water drains in Casemates which

we did not want to do until the Casemates project was actually lifting up the road and also the storm water drains between the Convent and Ragged Staff which due to problems with the fact that Lover's Lane has been done was actually in place so therefore there was no expenditure there. This actually covers the Casemates storm water drains of which part of it has already been completed. The area from the beginning of Main Street through to Waterport Gates have already been completed. Now there is an area that has to be completed from the Public Market along Corral Road and it also covers the survey of main stores in Line Wall Road and I understand that that is already in process at the moment.

Subhead 11 – Storm Water Drains and Sewers Replacement was agreed to and stood part of the Bill.

Subhead 12 – Computer Developments and Equipment

HON J J BOSSANO:

Do Government have a project on total computerisation with a price tag on it?

HON CHIEF MINISTER:

There is a comprehensive study report which identifies all the bits of Government that it was desirable to computerise and that exists, there is a booklet and there is a different section for each department and it is being done by the Computer Agency in the UK. The speed at which one implements that is a matter of choice, it is a question of how much resources one allocates to it. It has got a price tag. If we did everything that was in that report I think it would cost something in excess of £5 million but either one can do everything over as many years as one likes or one can do less of it over as many years as one likes, it is a question of now taking a la carte. We have our own priorities which we have extracted from that report of the departments that we want to start with especially the ones we want to network – Social Services,

ETB, Social Insurance, Immigration; the sort of departments that could usefully use each other's information for their functions. At the moment we tend to be providing something in the order of £500,000 a year just to get the project going.

Subhead 12 – Computer Developments and Equipment was agreed to and stood part of the Bill.

Subhead 13 was agreed to and stood part of the Bill.

Subhead 14 – Maintenance and Security of Existing Structures

HON J C PEREZ:

Can we know what that is about?

HON LT-COL E M BRITTO:

Yes, that is essentially the water catchment matting which is about £150,000. The matting that is laid on the sand and things are planted on top of it. The remainder is Lathbury Barracks security.

HON J C PEREZ:

Is the part nearer to the Caleta Palace Hotel, is that Gibraltar Government as well and the project will extend eventually to there?

HON CHIEF MINISTER:

Yes, the project is covering the whole of the part of the catchments which are Gibraltar Government. The MOD have got their own problems on their own side.

Subhead 14 – Maintenance and Security of Existing Structures was agreed to and stood part of the Bill.

Subhead 15 was agreed to and stood part of the Bill.

Subhead 16 – Demolition Works

HON J J BOSSANO:

Mr Chairman, presumably the fact that they are providing £250,000 means they have identified buildings that they want to demolish?

HON LT-COL E M BRITTO:

Building, singular mainly, this is the King's Bastion Generating Station.

Subhead 16 – Demolition Works was agreed to and stood part of the Bill.

Subheads 17 and 19 were agreed to and stood part of the Bill.

Subhead 20 – New Sports and Leisure Facilities

HON J J BOSSANO:

The £1 million, is provision for reclamation part of that £1 million?

HON LT-COL E M BRITTO:

Yes, Mr Chairman, but it also includes a revote of £140,000 for the skate park which is starting shortly on the USOC playing field but it is mainly the start of the project at Victoria Stadium.

HON J J BOSSANO:

But there is money for reclaiming the land, is that correct? I think the Minister said they were going to reclaim part of what used to be Scott's Yard?

HON LT-COL E M BRITTO:

Yes, this is what the money is for.

HON J J BOSSANO:

Is it that it is planned to go out to tender and get somebody to do it or are they going to do it by putting building rubble there?

HON LT-COL E M BRITTO:

That study is being done at the moment. There are various possibilities, some which have been discarded because they involved other projects and the way ahead is not absolutely clear and decided but it could be either of those; it could be dredging or it could be depositing materials, probably the first.

HON J J BOSSANO:

Is there any provision included there for any acquisition of any of the land around there that is not Government owned?

HON LT-COL E M BRITTO:

No, not under this vote.

Subhead 20 – New Sports and Leisure Facilities was agreed to and stood part of the Bill.

Subhead 21 to 23 were agreed to and stood part of the Bill.

Subhead 24 – Employment Service Projects

HON J J BOSSANO:

Mr Chairman, what specific projects are these employment service projects?

HON J J NETTO:

First of all, bearing in mind that the estimate for 1998/99 was basically for all the partitioning of what was going to be the Job Club but also bearing in mind that when I talk about the Job club I am not talking about a room, I am talking about a number of rooms and the first provision was doing the partitioning, cleaning the mess the place was in et cetera. What we are talking about in the new provision is all the equipment, furniture, an air conditioner needs to be provided, all the various facilities in all the various rooms within what we call the Job Club display unit, display of vacancies, a whole range of different things that will provide for the long-term unemployed as part of the facilities of the various rooms in the Job Club.

Subhead 24 – Employment Service Projects was agreed to and stood part of the Bill.

HEAD 105 – ELECTRICITY

Subheads 1 to 4 were agreed to and stood part of the Bill.

HEAD 106 – INDUSTRY AND DEVELOPMENT

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

Subhead 6 – Refurbishment of Public Market

HON J L BALDACHINO:

Mr Chairman, it was estimated in 1998/99 that it would cost £500,000; the forecast outturn was £90,000 and they have now estimated £300,000. Is it that that was over-estimated originally? Can we have an explanation?

HON P C MONTEGRIFFO:

The work has been undertaken in phases. £90,000 I think represents primarily the works to the roof that were the most urgent works because of the flooding that used to take place. We believe that the figure of £300,000 should be sufficient for the balance of the works although the original figure of £500,000 was an estimate that was calculated then and it is possible that we may have to come back at some future date for the balance of £100,000. But in discussion with the Public Market Association and with the project managers, I think an effort will be made to see whether the balance of works can be done for this amount.

Subhead 6 – Refurbishment of Public Market was agreed to and stood part of the Bill.

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

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

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

THIRD READING

HON ATTORNEY-GENERAL:

I have the honour to report that the Appropriation (1999-2000) Bill 1999, has been considered in Committee and agreed to, and I now move that it be read a third time and passed.

Question put. Agreed to.

The Bill was read a third time.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that the House do now adjourn to Wednesday 7th July 1999 at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 12.15 am on Saturday 5th June 1999.

GIBRALTAR

HOUSE OF ASSEMBLY



HANSARD

19TH MAY, 1999
(Vol. II)

(7th and 9th July 1999)

WEDNESDAY 7TH JULY, 1999

The House resumed at 10.00am.

PRESENT:

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

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 J C Perez
The Hon Dr J J Garcia

IN ATTENDANCE:

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

DOCUMENTS LAID

The Hon the Chief Minister 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 Chief Minister laid on the Table the following accounts:

- (1) The GJBS Annual Report and Accounts for the year ended 31st December 1998.
- (2) The Gibraltar Community Care Ltd audited accounts for the year ended 30th June 1996.
- (3) The Gibraltar Community Care Investments Ltd audited accounts for the year ended 30th June 1996.
- (4) The Gibraltar Community Care Trust audited accounts for the year ended 30th June 1996.
- (5) The Gibraltar Industrial Cleaners Ltd audited accounts for the period 1st January 1996 to 31st March 1997 and 1st April 1997 to 31st March 1998.

Ordered to lie.

The Hon the Attorney-General laid on the Table the Revision of the Laws (Supplement No.5) Order, 1999.

Ordered to lie.

The Hon the Financial and Development Secretary laid on the Table a Statement of Consolidated Fund Reallocations approved by the Financial and Development Secretary (Nos.11 to 13 of 1998/99).

Ordered to lie.

MOTIONS

HON CHIEF MINISTER:

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

Question put. Agreed to.

HON CHIEF MINISTER:

I move the motion standing in my name which reads: "That this House do approve by resolution the Federal Republic of Yugoslavia (Supply, Sale and Export of Petroleum and Petroleum Products) Regulation 1999."

Mr Speaker, in response to the killings and deportations of Kosovo Albanians by the authorities of the Federal Republic of Yugoslavia the European Union Council has taken steps to impose further political and economic sanctions on the authorities in Belgrade. This is notwithstanding the agreement at a military level entered into between NATO and the Federal Republic of Yugoslavia. The main aim of the European Community sanctions is to restrict President Milosevic's access to oil and funds and so further damage his ability to conduct military operations against the Kosovo civilians.

Mr Speaker, the Council of the European Union adopted a regulation, namely Regulation 900/1999 which prohibits the sale, supply or export directly or indirectly of petroleum and petroleum products to the Federal Republic of Yugoslavia. It allows exemptions under certain conditions for the sale, supply or export of petroleum and petroleum products for the use of diplomatic and consular missions of EU Member States for the use of a future international military presence and for humanitarian purposes. The motion before the House is to approve subsidiary legislation passed already in the Gazette giving effect to the Regulation passed by the Council of the European Community. The Gibraltar

Regulations make it an offence to infringe the prohibition of the EU Council Regulation and specify the penalties to be imposed. It provides also for the licensing of supply, sale and export of petroleum or petroleum products to the Federal Republic of Yugoslavia in those circumstances where the Regulation permits it by the Collector of Customs. Thirdly, they make provision for enforcement. As I have said, in Legal Notice 64 of 1999 the Federal Republic of Yugoslavia (Supply, Sale and Export of Petroleum and Petroleum Products) Regulations, 1999, have already been published and promulgated. That was done pursuant to Section 4 of the European Communities Ordinance. These, of course, are not United Nations sanctions. Unusually, they are European Communities sanctions. That is an unusual distinction. Under Section 4 of the European Communities Ordinance and specifically Section 4(3) of the European Community Ordinance Regulations made under Section 4(1) of the European Community Ordinance shall not come into force until such Regulations have been approved by Resolution of the House of Assembly. Although the Regulations have been promulgated they do not commence until they are approved by Resolution of this House and that is what this motion seeks to do. I commend the motion to the House.

Question proposed.

HON J J BOSSANO:

Mr Speaker, we will be voting against this motion. The mover of the motion has failed to provide an explanation as to why it is that this has been introduced and in any case there are elements in the actual Regulation which we disagree with and consequently approving the motion would mean approving the Regulation. The European Union Regulation is dated the 29th April so it is not something that has just been done by the European Union following the resolution of the military conflict. It was something that was being done previously and this is not a follow-up. Therefore, this is something that Gibraltar was required to do on the 29th April and not today. Indeed, the Regulation says, "These Regulations shall apply within the territory of the Community

including its air space and on board any aircraft or vessel under the jurisdiction of a Member State. The Regulation shall enter into force on the day on which publication in the Official Journal of the European Community..." which was the 29th April. So as far as we can tell, if we have not been stopping oil exports to Yugoslavia since the 29th April, we have been in breach of Community law. We are now saying that we are going to stop doing it as from today by which time other people may be ending the sanction that was introduced on the 29th April, but whether they do or they do not, there is no explanation being given as to why it is that this procedure is being adopted under the European Communities Ordinance, 1972, because, to my knowledge, the provision in the European Communities Ordinance, 1972 allowing the Governor to make Regulations subject to the approval of the resolution of the House has never been used before. We have checked in the United Kingdom and we cannot find that the United Kingdom has introduced Regulations now but it did introduce Regulations a year ago prohibiting exports to Yugoslavia as a result of Council Resolution 926/98 of the 27th April 1998. Why is it that we are required to do it in 1999 and we did not do it in 1998? It was also against Yugoslavia and it says "Article 1 of Council Regulation 926/98 of the 27th April 1998 concerning the reduction of economic relations with the Federal Republic and the prohibition of exports of certain goods". If we are supposed to stop the supply of fuel to Yugoslavia today, presumably we were supposed also to make sure that other things that were being prohibited a year ago were not being done from Gibraltar. I would have thought that other than what is self-evident by reading the motion and reading the Regulation, we would need more of an explanation as to why we are doing something we have never done before. The Regulations apply to ships and aircraft registered in Gibraltar. To my knowledge we have no aircraft registered in Gibraltar. The Regulation has some peculiar powers being given to Customs Officers given that what we are talking about is oil exports. It allows persons suspected of carrying on their body barrels of oil to be stopped by Customs Officers and searched. It is an offence to resist being searched for barrels of oil if you get stopped on the way to Yugoslavia. His Excellency the Governor may be quite happy to put in place that sort of nonsense but the

Opposition are not prepared to approve it. There appears to be some, shall we say, loose drafting in the Regulations in that there is definition in the Regulation which says "specified goods means the goods specified in the Annex to the Council Regulation, that is, the petroleum products". But then, in the body of the Regulation, "specified goods" and "any goods" are used interchangeably as if they meant the same thing. On the surface, as a layman, it seems to me that if one puts "specified goods" and one says that what is not permitted is that one exports specified goods to Yugoslavia, one should not then go on to say "any person who without reasonable excuse refuses to make a declaration or fails to produce any goods..." well, then "any goods" cannot mean the same thing as "specified goods".

It seems to me, therefore, that the Regulation that we are approving goes beyond the export of specified goods to Yugoslavia and creates offences which relate to any person refusing to produce evidence of goods that he has which are not necessarily the same goods and that is an offence under these new Regulations. The investigation of suspected ships, for example, provides that where any ship is for the time being chartered to a person who is a British citizen then the officers authorised under the Merchant Shipping Ordinance are able to board and question the Master. Why should it be our obligation to board ships if the ships are chartered to British citizens but not if they are chartered to Spanish citizens if they are in our jurisdiction when the Regulation says we are responsible for any ships that are under our jurisdiction? I would have thought if they are anchored in our territorial waters they are under our jurisdiction. Otherwise, frankly, they could be exporting thousands of pounds of oil because I am sure that none of the ships that are bunkering here or refueling here or taking petroleum products here are in fact chartered to British citizens which are defined in the Regulations as meaning either BDTC Gibraltar or British Citizens from the United Kingdom. The other peculiar drafting is that this investigation of suspected ships is something that the Authorised Officer may do provided the ship is chartered to a body incorporated under the Law of Gibraltar, so whereas in the case of an individual we can board a ship if the charterer is either a

Gibraltar or an Englishman, in the case of the charterer being a company, we can do it if the charterer is a Gibraltar company but not a UK company. There seems to be a discrepancy in the treatment there, quite apart from the fact that the company can be presumably incorporated anywhere in the world and what the Regulation is seeking to do is, I would have thought, to ensure that Community ports and Community airports are not used to break the sanctions against Yugoslavia. It raises an interesting point as to whether we are a Community airport after all, in this case, having been told we are not a Community airport since 1987, because, of course, the aircraft has to be in territory which is the territory of the European Union and if the aircraft is taking off from the Gibraltar Airport, either the Gibraltar Airport is territory of the European Union or it is not territory of the European Union.

The wording that is being used in fact follows what has been used in other Customs legislation where we are talking about people being suspected of hamming down something, of being about to do it or intending to do it and whether there is, on the Officer's side, reason to suspect. This seems to be much wider a net of the exercise of the power of detaining and investigating and boarding than in fact the wording used by the Regulation which talks about people knowingly and intentionally supplying or shipping goods to Yugoslavia. Quite apart, therefore, from the anomalies in the drafting of the Regulation which we have been able to identify in the short time we have been able to spend on this since it was published, Mr Speaker, I think the essence is that frankly there were EU Regulations adopted in 1998 prohibiting exports about which we did apparently nothing but the UK did. There are similar provisions in 1999 which the UK does not appear to have implemented - at least we have not found a separate Instrument that does it in the UK which we are doing here. We are using a mechanism which has never been used since 1972 when we joined the European Union and in fact the Regulation, as far as we can tell, like all Regulations issued by the European Union is primary legislation and therefore has been applicable in Gibraltar since the day it was published in the Journal of the European Community which is in fact what the Regulation says.

Apart from those considerations of a Parliamentary nature, shall we say, as to the correctness of what we are doing and the fact that we ought to know what we are doing in this House when we vote, I am not sure what it means in terms of what is a very substantial volume of business that is being done in Gibraltar on bunkering and on supplying. Given that we are talking about petroleum products, is it that there is reason to believe that Gibraltar may have been used to send stuff to Yugoslavia and that is why we are being asked to do something about it? In practice, what does it mean to the 5,000 ships that call at Gibraltar? Are we going to be doing regular inspections of all those ships and seeking information from the masters of the ship as to what they are going to do with the fuel they are taking on board? Is this something that we are doing as a paper exercise? Or is it intended that we should be doing this because we believe there is a requirement to do it so that Gibraltar does not become a place which is used to get round a Regulation of the European Union which, of course, we do not want to happen. The last thing we want is that somebody should turn up with a piece of paper in the European Union tomorrow or publish it in the ABC saying "Gibraltar is being used for sanctions busting". That is not what we want. We want to make sure that that is not going to happen. Then, does it mean that we have identified that there is a risk of that happening and that this is not just something which we are going to do which we can just ignore as a paper exercise but which is going to produce a requirement on the part of the Customs and on the part of the Port Department to scrutinise every vessel that comes in and out of Gibraltar? There has been no hint of that in the motion and we would like to have an answer on that part.

HON CHIEF MINISTER:

The Council Regulation No.900/1999 adopted by the Council of the European Community on the 29th April 1999 is, as all hon Members know, like all Regulations, of direct application throughout the whole territory of the Community. But as I am sure the hon Member would also know, had he read the Regulation more carefully, the Regulation itself requires the Member States

to make certain national provisions in areas such as the imposition of sanctions. For example, Article 4 of the Community Regulations says "each Member State shall determine the sanctions to be imposed where the provisions of these Regulations are infringed. Such sanctions shall be effective, proportionate and dissuasive". There are other parts of the Regulations which, without prejudice to the fact that Regulations are, as all Regulations of the Community are, directly applicable to the whole territory of the Community, the Regulation itself, as is not unusual indeed in Regulations, requires the Member States to nevertheless legislate usually in regard to the logistics, the enforcement, the sanctions, the evidential aspects of a requirement. That is why we, the United Kingdom and every other Member State of the European Community is doing this legislative act, in order to give effect to those parts of the Regulation which the Regulation itself requires to be done at Member State level.

The United Kingdom, if the hon Member wonders why we are using this procedure, intended, indeed still intends, I cannot tell him whether the Order in Council has already been passed for the others or not, but the United Kingdom's intention was to adopt this to achieve what we have done through local legislation. Incidentally he wanted to know the number of Statutory Instruments and I will tell him, but in respect of all its Dependent Territories, including those not in the European Community, the United Kingdom intended to do this by Order in Council which is usual, as the hon Member knows, in the case of international sanctions. Indeed, that is how the United Nations sanction which are the ones to which the hon Member is referring, which is the way that international urgent sanction resolutions are normally enforced. The United Kingdom is doing it by Order in Council. It was scheduled to be done by Order in Council for the rest of the territories in June. I cannot tell the hon Member whether it went through in June, as intended, or whether the date has drifted into July, but precisely because these were not United Nations sanctions, but EU obligations, the Government of Gibraltar were not content that they should be done by Order in Council, precisely because there is no precedent for Gibraltar's European Union obligations as opposed to other UN obligations being

implemented by Order in Council directly from the United Kingdom. As we were anxious not to create a precedent for the transposition or implementation of our EU obligations by a legislative Act of the United Kingdom, the Government of Gibraltar asked and Her Majesty's Government agreed, that we to the exclusion of all other territories would be allowed to do this by local legislation and would not be included in the Order in Council being adopted in London for the remainder of the Dependent Territories. The language and the provision of the Regulation, of which the hon Member is so critical, is the language in the Order in Council which is the United Kingdom's view of how it wants this international obligation that it has contracted to be extended to all its Crown Dependencies. The difference between us and the others is that we are doing it for the reason that I have explained, by local legislation whereas the other Overseas Territories are having it imposed on them by Order in Council and the hon Member knows the sensitivities of that in relation to Community obligations and the potential precedent value.

HON J J BOSSANO:

Mr Speaker, the sanctions that I mentioned are not UN sanctions. I said they were sanctions introduced by Statutory Instrument 1531 a year ago and they are giving effect to Article 1 of Council Regulation 926/98 of the 27th April 1998. We did not bring then here a Resolution approving Regulations to give, in effect, in Gibraltar comparable Regulations to the ones in the UK. This has nothing to do with the UN, so can I be told whether in fact it is that we did not introduce the sanctions in 1998 or that the United Kingdom introduced them and applied them to Gibraltar or what? If the explanation is that we are doing this for the first time because there has never been EU sanctions before then the answer is that is not correct. There were EU sanctions in 1998. What happened then?

HON CHIEF MINISTER:

Mr Speaker, the motion before the House is to approve these sanctions which are a new set of 1999 Regulations. If the hon

Member wants answers to other questions he will have to give me notice of them. This is not a debate about EU sanctions generally against Yugoslavia. It is about the approval by Resolution in this House of a specific set of local Regulations which were published last month.

I have explained to the hon Member how the United Kingdom intends to apply these sanctions on behalf of the Caribbean and North Atlantic territories. The hon Member queried whether the United Kingdom has itself legislated these sanctions and said that he had not been able to find the Instrument by which it had done so. The United Kingdom has indeed implemented these European Council Regulation sanctions and it is worth remembering that the Council adopted these Resolutions not that long ago on the 29th April. The United Kingdom itself did what we are now doing by Statutory Instrument No.1516 of 1999 which came into effect on the 3rd June 1999. Our own Regulations were published only a few days thereafter, after the United Kingdom, on the 8th June and this is the next opportunity that we have had to follow the procedure under Section 4(3) of the European Communities Ordinance to obtain the ratification of this House without which they do not commence, they do not come into operation.

Mr Speaker, there is no question of Gibraltar having been in breach of Community law since the 29th April just as the United Kingdom has not been in breach of Community law between the 29th April until the 3rd June when it adopted the Regulation which is of direct application. The Sanctions Order applies, different Member States will take different lengths of period of time to do what they need to do at a national level and indeed the hon Member should not assume, although the United Kingdom and, hopefully after today, Gibraltar will have done it, it may be that other Member States, have not yet achieved this. Certainly, there is no question of breach. I have explained to the hon Member why this procedure has been used. There was urgency in Gibraltar legislating this so that we could fall out of the Order in Council mechanism which we thought was important in a general wide EU context and therefore we published and used this procedure

which enables us to publish the Regulation and then bring it to the House.

The Government of Gibraltar, in matters to do with sanctions against Yugoslavia is not going to re-invent the wheel. The fact of the matter is that if others have given detailed consideration to how a delicate matter of this nature should be handled, really the suggestion that the Government of Gibraltar then considers separately the question of sanctions, considers separately how the sanctions should in practice be policed and upgraded, I think is an unnecessary dedication of local resources. These have been extended to Gibraltar as they will be extended to the rest of the United Kingdom Dependent Territories by Order in Council. We have satisfied ourselves with retrieving the legislative process for the reasons that I have explained. Obviously the Government have looked at the Regulations and considers that they are not inappropriate and having decided that they are not inappropriate it is not a question of perfecting them to see if they can be improved. If they are not objectionable then there is no reason why we should not subscribe in the required terms to an international initiative in relation to something as laudable as..... I hope hon Members will agree it is laudable, to impose sanctions on the regime in Belgrade, nor has there ever been either in the time of this administration or in previous administrations, including his own, any precedent in Gibraltar for reviewing issues of this sort. When Opposition Members had brought to this House, or had legislated in the Gazette, sanctions orders against Libya for example, this is just a question of accepting in Gibraltar what other international organisations had determined would be the sanctions regime. We do not think that there is anything in this sanctions regime which is loose or improper. It is in terms that apply elsewhere and therefore we are entirely satisfied that it does not deserve, in substance, whatever might be the merit, if any, of the hon Member's point and the theory and the practice of it, we believe that these measures are entirely justified as a means of applying sanctions against the regime in Belgrade. In any case, the hon Member knows that this is an international obligation and therefore it is not a voluntary matter for Gibraltar. These are international obligations contracted on our behalf by

the United Kingdom. I do not think that the hon Member's concerns are justified in respect of the bunkering trade. Bunkering trade means that one sells fuel to ships for its own combustion, in other words, for the running of its own engines. The delivery of cargoes, which is what this is intended to capture, the supply of fuel, petroleum products, to the Federal Yugoslav Republic and the trade that we do in Gibraltar is the ship equivalent of a petrol station, in other words that one sells to ships fuel in order to keep their engines running and not to put in their cargo holds to carry from a buyer to a seller. Therefore, the Government are entirely satisfied that the bunkering trade in Gibraltar will not be affected. It has nothing to do with the bunkering trade in Gibraltar and the trade that is affected is the international petroleum trade and of course they all take it on their chin because this is the consequence of imposing economic sanctions on people, that one foregoes the right to sell them ones products and frankly I am happy, delighted, that Gibraltar should subscribe to that international effort to bring democracy and ordinary human rights values to prevail in the Federal Republic of Yugoslavia. The question, therefore, of how this is going to be policed, whether every ship is going to be checked, does not arise in the context of bunkering. How the Collector of Customs polices this in respect of cargoes is a matter for him to exercise the powers given to him under this Regulation that we have before us in the House today which is precisely the reason why the Regulation contains provisions in that regard, so that there should be a regime of policing and implementation for the local implementers to follow.

I therefore, Mr Speaker, regret that the hon Members will not be supporting this Order. I would hope that whether they support the Order or not that they will signal their agreement to the Government's preference to do this by local legislation rather than have an EU obligation imposed on us by Order in Council. That is the principal reason why we are debating this at all. If it had not been for that factor this would have gone through, Gibraltar would simply have been added to the Order in Council list of applicable territories and therefore it is entirely because the Government have not wanted to create an Order in Council precedent for the implementation of an EU obligation that we have gone to the

trouble of discussing that with the United Kingdom, getting their agreement to exclude us from the Order in Council, drafting our own legislation, albeit following the wording of the Order in Council which the UK would require of us anyway, but then at least saving the principle that Gibraltar transposes through its own legislative mechanisms our EU obligations and that we do not have them done for us. I would hope that by itself that might be sufficient to entrap the hon Members' support for the Resolution before the House and that he should not pay an excessive amount of regard to the detail of the Regulation which is standard vanilla as it is going to be applied elsewhere in the Dependent Territories.

HON J J BOSSANO:

Can the Chief Minister confirm, Mr Speaker, whether in fact this follows what they have done in the UK in the Statutory Instrument of which he has given me the number; and whether in fact he knows that the one that is going to come out in the United Kingdom applying it to the other Dependent Territories is going to be the same as this. Is it that the Government of Gibraltar have seen, as it were, the graph of what is going to be applied in the other Dependent Territories and will follow it because in fact my recollection is that every time there has been a UK Order in Council on sanctions it has just been stating what the sanctions are about without going into any detail of people being investigated. Nothing of this size has ever come out as an Order in Council in my recollection. Is it that a new procedure is being adopted this time?

HON CHIEF MINISTER:

No, Mr Speaker, it is not. The reason why Orders in Council as they are seen in Gibraltar apply international sanctions have not been seen to go into this detail before is that normally the only thing that appears in Gibraltar is the notice extending the Order in Council and unless one goes to the trouble of getting the Order in Council, looking at it and finding its provisions, no one ever sees it. The only reason why we are seeing so much detail here is

because we are in effect adopting into Gibraltar law the nitty gritty that normally goes into the Order in Council in the United Kingdom adopting the measure. To answer the hon Member's principal question, he is right in saying that we have seen the text of the Order in Council as it is going to be applied to Dependent Territories. I can tell him that it contains precisely the heading and the language and the text and he is quite wrong, it is a lengthy document. I cannot, however, although I believe it to be the case, I have not myself compared the text line by line and therefore I would be reluctant to assume that the language is identical. For example, there are some bits which are clearly not identical. The Order in Council gives certain powers in the other Territories to Governors which here in this legislation it is given to the Collector of Customs. There are amendments of that sort but I do not believe that there are any substantive amendments. That is in so far as it relates to the other Overseas Territories. I have not seen, myself, the Instrument through which the United Kingdom has itself done it but I would expect that if this is the regime that the United Kingdom thinks is necessary in the Overseas Territories, that this is also the basis upon which it itself has done it but I would be happy to obtain from the hon Member confirmation, firstly, whether this is very substantially the same as the Overseas Territories which I believe is, from what I have seen because I have that document on my file. From what I have seen of it, although not compared it line by line, I believe it is the same as the Privy Council Order in Council for the other Territories and I will check whether it is also the same as the United Kingdom's Statutory Instrument 1516 of 1999 by which they did this, which, incidentally, is called The Federal Republic of Yugoslavia (Supply, Sale and Export of Petroleum and Petroleum Products) Regulations, 1999, which are exactly the same name as we have given to our own Regulation and I think we will find when we look at it that they are identical to the Regulations that are before this House for approval.

Question put. The House divided.

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

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

The motion was carried.

HON CHIEF MINISTER:

Mr Speaker, I beg to proceed with the motion standing in my name and which reads: "This House does resolve, pursuant to Section 4 of the Public Services Ombudsman Ordinance, that a salary of £35,000 per annum be paid to the Ombudsman and that the additional sum of £110,000 be provided to the Ombudsman in respect of the expenses of his office, including the personal emoluments of staff and other operating expenses, as set out in Appendix A to the Draft Estimates of Revenue and Expenditure for 1999/2000 approved by this House on the 4th June 1999."

Mr Speaker, under Section 4 of the Public Service Ombudsman Ordinance, that Section provides that there shall be paid to the holder of office of Ombudsman a salary, expenses and allowances at such rates as may from time to time be determined by Resolution of the House of Assembly. The salary, expenses

and allowances of the office of Ombudsman shall be a charge on the Consolidated Fund without the need for Appropriation. Mr Speaker, hon Members will recall when we debated the Public Service Ombudsman Ordinance that that provision which reflects, in large measure, the system applicable elsewhere is designed to make the Ombudsman independent financially from the Government as an executive and therefore the funding for the office of Ombudsman comes directly from the House of Assembly, from Parliament, and is approved by Resolution of the House rather than just be included as one line in the Appropriation Bill which gives the House much less opportunity to be, in a sense, the owner of the decision because it just gets involved and mixed up in a much bigger Appropriation mechanism exercise. The hon Members will then also recall that at Appendix A, as the Resolution suggests, of the Estimates booklet, there was a sort of mock departmental expenditure explanation of what the Government believes this House should approve for the Ombudsman. It obviously has not been done in isolation. It reflects discussions that have been held between the Ombudsman and the Government as to the amount of funding that he feels that he requires for the staff that he feels that he wants to recruit and for the operation that he feels he wants to establish there. The Resolution, of course, does contain an element of detail which is not specifically identified at Appendix A but is an important decision for this House to make and that is the personal salary of the Ombudsman itself which the Government believes, and the Ombudsman is entirely satisfied, should be fixed at £35,000 per annum.

The only further novelty that I can bring to the attention of the House is that we have now identified the building, out of which the Ombudsman will operate which we have been able to obtain a transfer of from the Ministry of Defence. The Ombudsman will operate from the ground floor of the building in Secretary's Lane which used to be the offices of the Defence Land Agent. It is roughly opposite the courtyard entrance to The Convent. That is a building which the Government had identified for the housing of semi-public functions but which the Government believes ought to be and be seen to be at a distance from the Government. The

Ombudsman will go in there. We have recently received a request which we will consider, I believe, favourably from the Police Complaints Authority for their secretary to be relocated away..... I believe it is presently and has been for many years housed in the Ministry of Employment for reasons that I do not understand, a chap who acts as secretary of the Police Complaints Board, he will be moved into that building as well and, indeed, it is probable that the Principal Auditor who is presently housed in the Government Treasury Building and therefore very close to the Government, that we will put him in this building as well, on a separate floor of it, and therefore that building will become a location for publicly-funded entities, especially those that exist for a purpose connected with scrutinising the executive in one form or another. So, bodies that exist for scrutinising the executive, publicly funded, but which ought to be at a distance from Government, Government believe should be housed more visibly separate from other civil service functions and therefore they will go, very probably, into that building as well. In so far as it is relevant to this motion, that is where the Ombudsman will operate.

The Ombudsman intends to employ, in addition to obviously himself, intends to employ a staff of four persons, two Investigating Officers, a Public Relations Officer, in other words an immediate face for the public that comes into his office and then also somebody to manage his computer facilities. That is the staff that he considers he wants and the Government have agreed to bring to this House a motion to provide the funding for that requirement of his. I therefore commend the motion to the House which, as I say, reflects not the Government's imposition on the Ombudsman but rather the proceeds of the fruit of discussions between the Government and the Ombudsman about what his reasonable requirements are. I commend the motion to the House.

Question proposed.

HON J J BOSSANO:

Mr Speaker, the overall budget of the Ombudsman Office was provided in the Estimates when the House voted £145,000, so here we are not seeking a decision on the overall funding, that has already been decided. What the Ordinance says is that the House has to approve the remuneration, expenses and allowances that are paid to the holder of the office of Ombudsman. The fact is that there is a salary of £35,000 and I think that if the holder of the office had any allowances or expenses other than the £35,000 then, presumably, the motion would have had to say so in order to comply with the letter of the law. If what we are doing here is a motion which is giving effect to Section 4(1) of the Ordinance and Section 4(1) says "there shall be paid to the holder" and not to the entity, we are not giving him the £145,000. We are paying the holder salary, expenses and allowances at such rate as may from time to time be determined by resolution of the House, then the Resolution of the House cannot be that he is getting £35,000 and an additional sum of £110,000 in respect of his expenses and allowances because in fact the £110,000 cover the salaries of the other members of the staff. We provided in the £145,000 in Appendix A that the salaries of everybody, including the Ombudsman, would come to £83,000. We are now being told that there are going to be four employees who will between them get £48,000, an average of £12,000 and that the Ombudsman himself will get £35,000. We have not been told how the £35,000 have been arrived at. Certainly, not by reference to Malta? Because in Malta it is half that amount even though the population is ten times that of Gibraltar. The fact that the holder of the office is happy to get £35,000 I imagine most people in Gibraltar would be happy to get £35,000. I had the Chief Minister's job for less than £35,000 for a number of years and I was happy with it, so that is neither here nor there. I would have thought that notwithstanding the fact that his independence is being determined by the fact that there is a Resolution saying what the salary should be, nevertheless there should be some rationale to where it is that the salary has been fixed in relation to what? In relation to what Ombudsmen get in other places with thirty thousand inhabitants? In relation to UK civil service rates?

In relation to the pay of Ministers? Or in relation to what? Other than it is the result of negotiation between the holder and the Government, well, we do not know whether that was the opening offer of the Government or the Government offered less and he managed to negotiate upwards or whether that was his suggestion. But certainly we are not supporting the £35,000. We have supported the £145,000 for the office, for the running of the establishment. Having looked at the position in Malta to try and get some guidance, given the importance that was given by the Minister, to following Malta, in fact it was interesting to discover that in the case of Malta the Ombudsman requires that there should be a two thirds majority of the House of Representatives for his appointment, something which the Government at the time said that although they welcomed our support they would certainly not have a veto from the Opposition. Let me say that I think it is only fair to say that this particular Ombudsman himself has been absolutely clear that he would not be interested in the job unless he had the support of both sides of the House and I just want to make clear that the fact that we question the level of remuneration is not that we are questioning his suitability to do the job because we supported the decision in the original Bill.

The Government have in fact provided additional information as to how they see the location where the office is going to be established and it seems to be a reasonably well placed location geographically, in the centre where people will have access and that there is the consideration being given to other semi-independent entities being housed in that same building. What I am surprised is that no mention has been made about the Consumer Advisory Service which I would have thought they would want to have there as well and whether in fact the Consumer Advisory Service which clearly is not what the Ombudsman is there for but is the only thing that there is at the moment and it may be that it needs reinforcing but if the only thing that there is at the moment to do for complaints about the private sector something similar to what the Ombudsman is going to do with complaints about the public sector. There is, therefore, a parallel in the creation of an avenue for grievances to be investigated although clearly the area of the Ombudsman is far

more important and far more serious in terms of redressing unsatisfactory service, shall we say, because after all in the case of the public sector the consumer has no market mechanism to go elsewhere if he does not like the service that he is getting and therefore the Ombudsman is dealing with a monopoly supplier of services when he is looking at the public administration. Nevertheless, I think the Consumer Advisory Service cannot simply be left in limbo and given that other areas like the Police Complaints Committee and the Principal Auditor have been mentioned, I would have thought it was appropriate to give consideration to that at the same time. My understanding is that they have been in limbo for a very long time. They are supposed to be coming under the Development Corporation and they are not very sure who they come under. They are not very sure what is their line of responsibility and to whom they report and I think it is an appropriate time to address that issue in the context of what has been said about the Unit being housed in Secretary's Lane. Mr Speaker, because we are not supporting the £35,000 we will not be voting in favour. We are abstaining on this motion. We are certainly not voting against it because we are in favour of the office and we are in favour of the individual and we are in favour of the £145,000 but I certainly do not think that the fact that of the £83,000 that is going to be shared by five persons, one gets £35,000 and the other four share £48,000 is something that we do not necessarily agree with.

HON CHIEF MINISTER:

Mr Speaker, on the last point first, as the hon Member knows because we have made public statements to that effect, the Government are looking at the question of the Consumer Advisory Service and restoring it to its proper and effective statutory function from which it had, regrettably, been allowed to decline over many years under the previous administration. I am glad to see that when we do what we are going to do with the Consumer Advisory Service, that the hon Members now will agree but, frankly, Mr Speaker, it is certainly touching to see the hon Members new found enthusiasm for the concept of Consumer Protection and Advisory Service which used to be, as he knows, a

much more prominent feature of the public service in Gibraltar than it is now principally because it was left in limbo, to use his own words, principally during the years that he was in Government. Let me tell the hon Member the reason why we have not already done so is that we had been discussing with the Ombudsman the possibility that somehow he should sit on the top of the whole thing, to avoid duplication of senior management and that sort of thing. To us it seems a neat solution that the Ombudsman should sit at the top of a structure that could loosely be called, and indeed we called it in our press release, a civic rights agency which would contain not just the office of Ombudsman but the Consumer Advisory Service, as it is now called, which would be not just a consumer protection office as he has referred to but, indeed, we want to extend the Consumer Advisory Service to provide a Citizens Advisory Bureau type service. It seems to us that these are all functions which ought to be independent of Government and if we are going to create an infrastructure in a building which needs to be serviced and provided with receptionist and telephonist, the logical thing is to put as many of these independent from executive services as possible. Let me say to the hon Member that the Ombudsman is not keen, he is quite happy to see them in the same building, but he is not particularly keen to obtain management responsibility for the whole structure. He takes the view that this is a different function to the function of Ombudsman and however neat and convenient it might be he is not sure at this stage that it is compatible with the office of Ombudsman and, of course, the Government respects that, although we would have preferred the neat structured solution.

Mr Speaker, let me say that we are looking at the space available in this building. The building is not quite as big as it looks because although it has got a garden at the back, the building is really just the outshape on two floors as one can see from Governor's Lane and it is not clear which of the various desirable functions would all fit in there. The Ombudsman will take the whole or most of the first floor. We need one room for the Police Complaints. I do not know whether the Consumer Protection Unit and the Principal Auditor can fit on the top floor or whether we are going to have to

choose one of them to stay out and make provision for somewhere else. Certainly, we will report to the House as soon as the Government have made a decision on such issues.

Mr Speaker, with the greatest of respect to the Leader of the Opposition, I do deduce from what he has said that he has not correctly understood the statutory nature either of the office of Ombudsman nor indeed the treatment that was given to the £145,000 reflected in Appendix A. Let us take that second point first. This House in fact has not voted for the £145,000 because the £145,000 was under the Consolidated Fund charges and the House, as he knows, does not vote in the Finance Bill on Consolidated Fund charges. The hon Member sees that under section 4(2) of the Ombudsman Ordinance it says that the salary, expenses and allowances of the office of the Ombudsman shall be a charge on the Consolidated Fund without the need for Appropriation. So the House does not provide for £145,000. A figure which was our best estimate at the time has been provided and not voted on under the Consolidated Fund charges. Appendix A was there as an indication of how the Government had come to that figure which had been included in the Consolidated Fund charges. Under the terms of the Ombudsman Ordinance it is this House, through this mechanism of a resolution brought before it, that decides not just on the question of the salary of the Ombudsman but also on the expenses and allowances that would be allowed to it. Therefore, there is no question of the House already having exercised any of the functions which we are now trying to exercise this morning. Mr Speaker, which brings me to the second point.....

HON J J BOSSANO:

Does that mean in fact that no payment has been possible until the Resolution is passed? Because there has been no figure which could be charged on the Consolidated Fund?

HON CHIEF MINISTER:

Mr Speaker, there may have been a payment on account of a salary, once it has been approved in the Finance Bill. It is in the Estimates as a Consolidated Fund charge and therefore it is a valid payment once it has been approved by this House. I do not know whether the Ombudsman has been living on his savings or whether he has been getting from the Government an advance to tie him along until his official salary is sanctioned.

Mr Speaker, which brings me to the second point, which is that the hon Member said "well, look, it can only be paid to the holder of the salary, his salary, but surely not to the whole, to the entity that we pay the other expenses for the salaries of other staff". Mr Speaker, I believe that this is an incorrect analysis of the situation by the Leader of the Opposition. The Public Services Ombudsman Ordinance does not establish an entity. It does not establish an organisation. This is not a Government Department. It does not establish a statutory body. As an organisation it simply establishes the office of the Ombudsman and therefore all the expenses are his personally. He is the one who is going to do the recruiting, not the Government. He is the one who is going to make the payments. These are his expenses and therefore I take the opposite view to the hon Member that the expenses are actually payable to him. This is not a Government Department with rules and the Ordinance says "there shall be paid to the holder of the office of Ombudsman a salary, expenses and allowances at such rates as the House may.....". Amongst the expenses that have to be paid to the Ombudsman are the expenses in employing people to support him in his role. Therefore, Mr Speaker, as far as the Government are concerned what this Resolution is doing, what the House is doing by this Resolution, is making over a sum of money to the Ombudsman to allow him to pay himself and to discharge a series of other expenses which he will have which will include the salary and other terms of employment of his staff. There will be other office expenses, communication expenses, stationery expenses, electricity consumption, rates, I suppose, all that sort of thing and which are his expenses because all the functions, duties and

obligations under the Ordinance are not imposed by anything called an entity, they are imposed on the Ombudsman himself. Therefore, it is for him to discharge the expenses and the expenses are therefore his. The question of the salary, it is important not to lose sight of the fact that the Ombudsman is not a Government employee and that the Ombudsman's employees, the four people when he recruits them that I have just described, they will not be Government employees. They will be employees of the Ombudsman. Of course, the Government will have to give an element of security to the Ombudsman, that is why hon Members may recall that his powers of engaging people, in other words the number of people and the terms upon which he can engage them, need to be approved by the Chief Secretary. That is in Section 7 "the Ombudsman may, with the written approval of the Chief Secretary and within the limits of allowances and expenses set by the House of Assembly, appoint such Officers as he may determine to be necessary or convenient".

Mr Speaker, the hon Members have been, I was going to say implicitly critical, but I think that they have now been explicitly critical of the salary of £35,000. The Government are determined that the office of Ombudsman shall be regarded as a permanent, prestigious and important post within our community. The Government believe that people that occupy such posts should be properly remunerated. That if one pays too little one necessarily limits the calibre of the person who will be willing to attain that post and therefore the Government believe that the salary of £35,000 is an appropriate salary to have offered the Ombudsman. The Government believe in paying people for the job that they do. The hon Members believe that in respect of some people but not in respect of others. We believe it in the case of everybody because if we were now to analyse the arrangement entered into by hon Members which allowed others to enhance their salaries, then we would also have to consider whether in relation to the function of the Minister or the function of an Ombudsman, some of the people who enjoyed enormous improvements in their personal financial situation as a result of some of the privatisation exercises entered into by the Opposition Members, allegedly to save the taxpayers money, would also need to be put on the table

and analysed side by side with the £35,000 salary for the office of Ombudsman and the £40,000 plus salary which we have been implicitly criticised in passing for the office of Ministers. We do not take that view of things. We think that everybody should be paid a salary which is appropriate for the job that he is doing and in the context of the Ombudsman we believe that if the Ombudsman is to attain the respect, prestige, profile, permanence and importance that we on the Government side attach to the office of Ombudsman that he should be properly remunerated. Of course, if there are still Opposition Members who consider that the Ombudsman is a toothless tiger then, of course, I can understand why such a person might think £35,000 is too much. I can tell the House that for this very sharply toothed tiger, which is what he is, the salary of £35,000..... I do not know the relationship that now exists between the hon Member that once said that and the official Opposition of which he is now, for all intents and purposes, a partisan part. I do not know whether that now constrains the hon Member, Dr Garcia, to repeat the views that he expressed at that time. But certainly since he once said that it was a toothless tiger I would expect him to vote against it, not to go along and simply abstain which reflects neither support nor opposition, I dare say. We will interpret the hon Member's failure to oppose the motion as evidence of the fact that he has, and I would congratulate him for doing so, reconsidered his position and reflect the fact that he no longer takes the view that this office is a toothless tiger.

Mr Speaker, to suggest a two thirds majority for anything in this House is tantamount to giving another veto to the Opposition [interruption] well, of course it is Mr Speaker and that is not what happens in other Parliaments when a two thirds majority is required. In this Parliament the Government party can never have a two thirds majority. By definition, we can only have a 50 per cent plus one majority and therefore, Mr Speaker, to use in this House the mechanism of requiring a two thirds majority is tantamount to saying that the Opposition will decide who the Ombudsman shall be, that the Opposition will decide how much money he should have and that the Opposition will decide what the salary is. I know that the hon Member has not quite come to terms with the fact that he is now in Opposition. But surely he has

got to understand that given our parliamentary make up, that if there is to be a majority it has got to be a majority that operates in a usual parliamentary sense and not one that operates in a way which always gives the Opposition the veto because if one were genuinely proposing the two thirds majority approach, the sort of totally honest way of projecting that point in the context of our parliamentary and electoral system is to say that there should be a 100 per cent support because two thirds, in effect, given that we have two parties and at least if there is still a third party which I seriously doubt, it operates under the whip of the second party in this House, I see no evidence of any independent existence for the third party inside this House, that would be tantamount to a 100 per cent majority because the idea that some of his colleagues are going to vote against him on such a motion is unusual. Perhaps in Parliaments which are constituted differently with perhaps more political parties with a more enough possibility of one party may or may not have the two thirds majority, it is appropriate. Certainly, in our Parliament, constituted as it is, to suggest that something should require a two thirds majority is a rather sly way of saying that the Opposition's approval must be required. The way to achieve that is to simply say so. Therefore, Mr Speaker, I believe that the hon Members could, if they were minded to simply record facts, that they do not approve of the £35,000 salary and nevertheless support the motion so that the office of Ombudsman will get off to the start that it has got off to on the previous occasions that we have discussed it which is with support across the floor of the House. I say that on the assumption that the hon Member Dr Garcia has indeed reconsidered his position and now thinks that the office of Ombudsman as constituted is a worthwhile thing worth his support.

Question put. The House divided.

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

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

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

The motion was carried.

HON CHIEF MINISTER:

Mr Speaker, I beg to proceed with the motion standing in my name and which reads: "There be hereby constituted a Select Committee of this House comprising of three Members nominated by the Chief Minister, namely the Hon P R Caruana, the Hon Keith Azopardi and the Hon Bernard Linares, and two Members nominated by the Leader of the Opposition, namely the Hon J J Bossano and the Hon J J Garcia to review all aspects of the Gibraltar Constitution Order 1969 and to report back to the House with its view on any desirable reform thereof".

Mr Speaker, hon Members will be aware that under the Standing Orders of this House, a motion to constitute a Select Committee has to name the Members of it and cannot be done by a formula which says how they will be appointed. That is why, following consultation with the Leader of the Opposition, I obtained from him the nomination of his two nominees, himself and Dr Garcia.

Mr Speaker, the House well knows that it is the policy of the Government to modernise the Constitution and to achieve a modern relationship with the United Kingdom reflected in an upgraded, reformed, Constitution that will eliminate the colonial

trappings in it so that we can therefore hold Gibraltar up as having ceased to be in a colonial, in a historical sense, relationship with the United Kingdom. The Government have also said in the past that it would be using, in order to achieve two purposes, as I will describe in a moment, the mechanism of the Select Committee of the House, firstly, in an attempt to see if a consensus can be obtained in the House so that when proposals are put to the United Kingdom for constitutional reform in Gibraltar that they should be the Gibraltar position and that they should reflect the consensus view of the whole House. Secondly, that there should be a mechanism through which the whole House can obtain the views of the widest possible cross section of the community of Gibraltar and that therefore a mechanism should be established and this is the one that should be selected to enable anybody in Gibraltar, be they a political party, lobby groups, individuals, who wish to submit evidence either written or oral to the Select Committee of the House, this procedure under Standing Orders allows them to do that. The objective is that the Government should consider what really is a very wide remit and that is to review all aspects of the Gibraltar Constitution and to report back to the House with its view on any desirable reform thereof, having consulted a wide process of consultation which is not stated in the Resolution because it is implicit and provided for in the Standing Orders of the House where the Select Committee have the right, not just to allow people to give evidence, but indeed call upon people to give evidence. We believe that this is the most formal structure that can be established. We believe that there is no more "senior" in local terms Constitutional body that can be established than a Select Committee of this House. The alternative, which would have been some form of Constitutional Conference, and remember that the Constitutional Conference on the last occasion was convened by the United Kingdom, not by the Gibraltar Government. The Gibraltar Government conducted their own process, establishing this under the rules of this House will give that Committee a formal, legislative, standing and backing as an instrument of the Parliament of Gibraltar which we think will give more weight to it in all quarters of the United Kingdom. Therefore, Mr Speaker, the motion sets the widest possible terms of reference. All aspects of the Gibraltar

Constitution, not just those institutions incidentally that govern our institutional relationship with the United Kingdom in terms of where particular powers are vested in particular areas, but we as a Government, let me say, attach particular importance to certain domestic aspects of the Constitution. We believe that there are certain transparency issues. That there are certain checks and balances issues, that there are certain local quality of democracy issues, nothing to do with our international status which ought to be enshrined in our Constitution. Therefore, when we talk about Constitutional Review, we are talking not just about the aspects of our Constitution which reflects our institutional relationship with the United Kingdom but also the question, what does the Constitution provide about how we govern ourselves in terms of openness, transparency, checks and balances and the relative interaction of domestic authorities? These are also important to the quality of our Constitution and the enduring quality of our democracy. Therefore, Mr Speaker, hon Members will see that the Motion preempts nothing and is a wide remit that enables the Committee to examine all aspects of this matter and to report without any constraints whatsoever back to the whole House with their findings and recommendations. I commend the motion to the House.

Question proposed.

HON J J BOSSANO:

Mr Speaker, we are voting in favour of the motion. Obviously, we will be participating in the Select Committee. I think it is important to spell out precisely how we see this so that there is no doubt as to what it is we are participating in as far as we are concerned. Let me say that in the statement made to the Committee of 24 by the Chief Minister there were paragraphs which gave the impression that we were talking about changing the Constitution merely to give legal effect to what was already the practice and that consequently the modernisation would then be the appropriate label for it. That is to say, it is something that is out of date, which no longer reflects the reality of today's Gibraltar and we are modernising it in order to reflect, on paper, what happens

in practice. If that was all that was intended we would not want to be a part of that and if we were to finish up with a modernised Constitution that retained the status of Gibraltar as a non-self governing territory, subject to Article 73E of the Charter of the United Nations in respect of which the United Kingdom was required to report annually to the UN until such time as we were decolonised, then effectively, as far as we were concerned the importance of what needs to be done would not have happened and in such circumstances our position would be that if that was put to the people in a referendum we would campaign against its acceptance. I think it is important that that should clearly be understood because we do not want to be seen to be misleading anybody as to where we are coming from.

Having said that, let me say that of course the Chief Minister does not always say the same thing on different occasions. Indeed, he does not even say the same thing on the same occasions, because when he was answering questions, in answer to a question from the Papua New Guinea Ambassador about free association, he said "we are about to put to the United Kingdom proposals for what we call the modernisation of the Constitution but which would take it right out of the realm of colonialism and when we are finished what we will be is much, much closer to the concept of free association". If indeed the policy of the Government is that we are going to come up as a result of the work of the Select Committee with proposals that will bring us much, much closer to the concept of free association, then I will suggest that the Chief Minister talk to the Hon Mr Montegriffo who in fact in 1987 produced a blueprint to bring us much, much closer to free association twelve years ago. We in fact, in the 1996 Election, after experiencing the impossibility of pinning down the United Kingdom to discussing anything, decided that the only way to tackle the situation was precisely to go back to the work that had been done by the AACR up to 1987 on free association and indeed the position that was adopted by the Legislative Council in 1964 with the encouragement of the British Government before the Referendum. It is quite clear from reading what took place at the time that in 1964 when the Legislative Council unanimously, prior to the 1964 Election and post the 1964 Election,

unanimously took the position that they wished Gibraltar to be decolonised by opting for the free association route which was then one of the three that existed, because in 1964 there were only three, the fourth one appeared in 1970, they were doing so having been given the tacit go-ahead by the UK. Indeed, in 1964, post the implementation of the 1964 Constitution the Committee of 24 was informed and there is an amazing similarity between what was said in 1964 and what was said in 1996. In 1964 the Committee of 24 was told that we were practically, in reality, self-governing, and that in fact the change of the Constitution which would take place within five years, by 1969, would be the final stage required to decolonise us by putting into the Constitution what was already the reality. In the 1969 Constitution, in fact, it says that the ministerial responsibilities were being given legal form as a result of the 1964 Constitution, but were already operational prior to that Constitution following the 1964 Constitution. In 1964, and indeed in 1968, proposals were put to the United Kingdom for Gibraltar to come under the Home Office. We will be putting that as our view to the Select Committee consistent in fact with what we spelt out in the manifesto in 1996 which was the view of the GSLP as to what it is that is required in order to engage the United Kingdom to commit itself to decolonising Gibraltar because if that is the only real obstacle, the only real obstacle that we face is that if all that the United Kingdom is going to do is to pacify the natives by stringing us along and then making some concessions which they hope will keep us quiet for another 30 years, then, effectively, we will have wasted the time of everybody in Gibraltar and our own and we should not play their game. The fundamental commitment has to come from the UK. It is the UK that has to go back to the UN and face what would be I imagine not a very pleasant experience of telling them "look, we have now reached an agreement with the Gibraltarians. We have negotiated with them the kind of relationship that they want and therefore they are now, as far as they are concerned and as far as we are concerned, decolonised and consequently we are no longer accepting that they are a territory which comes under the terms of reference of the Committee of 24 in respect of which we have to submit annual reports to the Secretary-General". If that does not happen, then

effectively, the decolonisation Constitution and the exercise of self-determination would be something that would be purely domestic as the 1967 Referendum was. Because the real tragedy of the 1967 Referendum was that the people who went to vote and plastered Gibraltar with Union Jacks thought that they were voting in an exercise of self-determination limited to the two options of either staying as a British Colony or passing over to Spain, but nevertheless in an exercise which having voted would then be accepted. The truth is that the UN condemned the Referendum before it was held, rejected it after it was held, and instructed the United Kingdom to hand us over to Spain by October 1969. Frankly, the last thing we want to do is precipitate that kind of sequence of events but nevertheless the alternative cannot be that we stay as we are indefinitely in terms of our international status and in terms of our status in the UN so that the United Kingdom and Spain continue negotiating or not negotiating our decolonisation whilst we kid ourselves that we have ceased to be a colony. In putting forward our views in 1996 we spelt out that there was the example of the free association agreement with the Cook Islands, which was the one that had been looked at in 1986 and 1987 by a sub-committee of the AACR and in fact one of the things that is very clear in that Constitution is that the most important area in the difference between the colonial territories and the freely-associated territories is in the conduct of foreign affairs, because the conduct of foreign affairs in a territory that is freely associated is done on behalf of the territory and at referendum to the territory. That is to say, it is not the case that New Zealand negotiates with other people in the region and does so for itself and the Cook Islands but then decides that if the interests of New Zealand so require it they ditch the Cook Islands and they do a deal for themselves. That is not the case. What New Zealand does is it negotiates for itself what the New Zealand Parliament wants and it negotiates for the Cook Islands what the Cook Islands Government and Parliament wants. Consequently, New Zealand in that situation is the agent of the Cook Islands because the Cook Islands is not in fact an independent state in the sense of handling its own defence and foreign affairs. It has a defence and foreign affairs agreement with the associated state that handles it on its behalf.

We consider that that is one of the fundamental elements that need to be tackled and we also think and we said so in the Manifesto that, Mr Speaker, in the case of Gibraltar there is a critical area in the relationship of the European Union and Gibraltar and the United Kingdom for which we blame the United Kingdom because we think that the mess that Gibraltar is in is not a mess created by the Spaniards. It is a mess exploited by the Spaniards but created by the British Government, just like the fact that we were denied the vote in the European Union in 1976, was a unilateral act by the UK and the rest of the issues relating to us in terms of where we stand..... we have a position where the latest statement from the European Union in terms of the Company Accounts directive is to say to the United Kingdom that there will be Infraction Proceedings against the United Kingdom for the United Kingdom's failure to give effect to the directive in its territory. The fact that this is a defined domestic matter in 1969 is meaningless because in 1972 any area of Community law, as far as the Community is concerned, the United Kingdom is required to give effect to in Gibraltar in whatever way it sees fit but it has to give effect. If giving effect to it runs roughshod over the Constitution then that, as far as the European Union is concerned, is neither here nor there. In fact, we are in the European Union as a territory for whose external relations the United Kingdom is responsible. We believe that being responsible for our external relations does not mean that they have the right to impose on us whatever they choose in relation to the European Union. What we believe is that they are responsible for acting in our name and on our behalf, that is what the equation is supposed to be, not the other way round. In looking at the area of external affairs we cannot, in the context of our membership of the European Union, look at external affairs within the Union and external affairs outside the Union as synonymous. It seems to us that when the European Union increasingly participates as a unit in international relations, then the international relations of Gibraltar must fit in with what is being agreed between the Union as a whole and the rest of the world but when we are talking about bilateral, internal relations inside the Union, then that is not the same as talking about foreign affairs because in fact it affects every domestic facet of life, education, employment, health care, working

conditions. All those things cannot now be described as external affairs because they are things on which there are directives, otherwise there are no domestic affairs left. So we have de facto a situation where contrary to the view that was put to the Committee of 24 that we have today by the passage of time effectively achieved a greater level of self-government than when the Constitution was done in 1969, I think it is the opposite. The passage of time has effectively reduced the level of self-government, not increased it because it has extended the concept of the United Kingdom being responsible for implementation of its international obligations in Gibraltar to every nook and cranny of our society. If everything that comes out in the form of a directive, the Yugoslav Regulations that came out, primary law in Gibraltar and the United Kingdom does it by Order in Council in the other Colonies, because it chooses to do it in the other Colonies, presumably it has no requirement to do it but it has a requirement to do it in Gibraltar because Gibraltar is Community territory and the Regulation says "in the territory of the Union" and we are the territory of the Union. But, if everything that has to be done in the territory of the Union is something over which the United Kingdom has the last word then there are no defined domestic matters left, other than the ones that the Community has not yet got round to harmonising because once there are attempts to harmonise those matters, then that is it.

So, we need in fact in terms of domestic issues to recover some of the lost ground and I think that has to be done in re-defining what the United Kingdom does for us in the European Union and how they go about doing it. The Constitution of 1969 in fact, Mr Speaker, has got the same wording as, for example, the one of Bermuda of 1968 or the one of the Falkland Islands of 1985 so it shows that in terms of what the Governor is supposed to do as the head of the Executive, the fact that he controls the Police, the fact that he controls the Civil Service, the fact that he is responsible for appointments, the fact that he is responsible for promotions, it is in all of them. In fact, even in Commonwealth countries which have become independent there is the same concept that the public service are in the employment of the Crown, not in the employment of the Federal Government of

Australia, or the Federal Government of Canada. They are employees of the Crown and it is the Governor General that is the head of the Executive obviously, in carrying out the policies that the Government decides by a majority in Parliament. If we are looking at that area then it seems to me that it is not the way that these Instruments are drafted but whether they are in practice being implemented in a way here which is different from what they operate in other places. Clearly, for us, in supporting this motion and in participating in the Select Committee the primary consideration would be not to get bogged down in that but to concentrate on achieving as our first objective a commitment from the United Kingdom that they will be engaging, with Gibraltar, in order to come up with a new Constitution that will replace the one that we have got there and that will mean that once that Constitution is approved by the people in the exercise of their right of self-determination, that that will be the end of Gibraltar's colonial status. Unless and until we get that, effectively, everything else that we do is tinkering with the problem instead of getting to the roots of it. Obviously, the Select Committee, as other Select Committees have done in the past, will give an opportunity to Mr Guy Stagnetto or Mr Andrew Haynes or anybody else that has recently been complaining in the Chronicle of not having sufficient opportunity to ventilate alternatives to put their views to the Committee as to what ought to be done and we, of course, have an obligation, once we set up this Committee to give serious and honest analysis to whatever ideas are put to us from whatever quarter they come. Therefore, we are happy to see this going on. The only regret is that it has taken this long, Mr Speaker. The Chief Minister told the Fourth Committee in 1998 that they had already said in 1997 that they were putting proposals to the United Kingdom and that these proposals were making progress and that they would be followed up by a Select Committee of the House. In fact, we are now in 1996 and it is quite obvious that the Select Committee, if it finds itself loaded with a lot of material, may not survive the life of the House in which case we would have to start the process all over again, presumably after an election. I would imagine that a Select Committee of the House ceases to function once the life of the House expires.

HON CHIEF MINISTER:

Mr Speaker, the Government have formulated its motion in wide terms. We have not sought to limit its scope of enquiry. It is available to look into, to discuss whatever aspect of the Gibraltar Constitution Order 1969 it wishes to discuss. But of course as I am sure the hon Member will also recognise, by the same token, the Government are not willing to mortgage the process to the views, either of itself or to the views of the Opposition. Obviously, what the hon Member has said reflects the Opposition's analysis and the Opposition's view. I suppose if one cannot arrive at a consensus report they will then be reflected in a minority report. That is fine as well. That often happens in Select Committees. The Opposition participates in the Select Committee as oppositions participate in select committees elsewhere in a minority but it is a genuine attempt by the Government to seek consensus. We should neither of us pre-empt, by seeking to impose conditions, suffice it to say that if consensus cannot be reached the Government have the majority and if we are still in office at that time, will be in a position to proceed with its proposals but the Government's preference is to try and seek a consensus Gibraltar position. The mechanism of the Select Committee is a genuine attempt to achieve that. But, of course, whilst we are happy to see common ground and to seek to what extent to a process of give and take a common position can be found, obviously the Government are not going to be willing to mortgage its policy, or rather to exchange its policy for the policy of the Opposition minority in the Committee and in the House and I do not suppose that the hon Members would expect us to do that.

The hon Member draws a very immediate link between the process of constitutional review and what might or might not happen at the United Nations. Mr Speaker, it is not the Government's view that constitutional modernisation is only of value if it is followed by events which he and I might well agree, represents verifiable or auditable decolonisation but things have to be taken in their proper order. The content of the Constitution

is not determined one way or the other on the question of decolonisation. Indeed, I saw the other day a United Nations document that says that even choosing the status quo, even choosing to remain a Colony, is a valid form of the exercise of the right to self-determination. Therefore, the sequential events are constitutional reform, followed by an act of self-determination which is an essential sine qua non of decolonisation. Whatever the Constitution modern that emerges, it has to be put to the people in an act of self-determination which is basically a referendum and then by all means follow, although it is not in our hands to achieve it, it is in our hands to press for it and to call for it, but certainly it is not in our hands by ourselves to obtain Gibraltar's delisting. Time will tell the extent to which, in this Committee, the views of the Opposition are reconcilable with the views of the Government.

The hon Member in quoting from my Question and Answer Session in the United Nations might more constructively, given the point that he was making, have quoted from the text of my speech that preceded that question in which I said that a process of constitutional modernisation followed by an act of self-determination in which that constitutional status had been freely chosen by the people of Gibraltar in what would be an act of self-determination, I said to the Committee of 24 "we believe would then entitle us to be delisted". I am not sure that the hon Member has not spotted that or simply did not think that he could level enough criticism at me if he had quoted it. Certainly I believe that that is far as Gibraltar can go. We can go and say what we believe will entitle us to. To suggest that Gibraltar would then be able to obtain the delisting I think would be to overstate what we are able to achieve ourselves. I think that the hon Member's subsequent contribution was more to the point where he said that of course it would then be a matter for the United Kingdom to delist us. Therefore, at that point it would become a question of Gibraltar lobbying and things of that sort. I think it would be incorrect to signal to the electorate in Gibraltar that there is anything that Gibraltar can do by itself to obtain a delisting. Indeed, the hon Member may be interested to learn that one of the matters of the new Chairman of the Committee of 24 is very

interested in and is working on, I discussed with him over dinner, is the mechanism for delisting, the criteria and mechanism for delisting territories is the issue that most interests him. Therefore, this is a live issue.

Mr Speaker, the reference to free association was in answer to a question and has to be read in that context. What I said was that if we had a modernised Constitution without the colonial trappings in it, that we had a modern relationship with the United Kingdom, freely chosen by the people of Gibraltar in referendum, that that was much closer to the concept of free association which is a more equal partnership, a relationship less colonial in nature. It should not be read in the context of the point in which the hon Member focuses which is this conduct of foreign affairs on an agency basis which certainly I was not intending to suggest that we felt we could achieve that or that the proposals of the Government of Gibraltar have developed in its own mind would achieve that or not achieve that. The phrase "much closer to" means much closer to and does not mean it, free association. It means something less than free association by definition. The hon Member raised the question of the language in the infraction decision - failure by the United Kingdom to implement in its territory. The hon Member I hope was not intending to suggest that that represents new language or a new development. That has always been the position in pre Infraction proceedings letters, in Article 169 letters, in recent opinion. The European Community takes the view that the party who has contracted the international obligation to do these things is the Member State. The Member State is the United Kingdom and that how this is done is a matter for the national laws of Member States which we say means the Gibraltar Constitution Order and not the European Communities Act of the United Kingdom. But the European Community regards that as an internal mechanism of Member State legislation. I think the United Kingdom argues the same thing. Not that she always stands her ground on the matter, indeed she often does not, but when the United Kingdom is defending its right to nominate a competent authority in Gibraltar it says "look, the internal legal arrangement within the Member State for the provision of competent authorities is a matter for the Member State and the

Member State has promulgated a law called the 1969 Gibraltar Constitution Order which is United Kingdom law and has created a mechanism which establishes competent authorities in Gibraltar, separate to the United Kingdom's own domestic competent authority" so the United Kingdom argues the same thing about our autonomous powers not just at the legislative level but indeed at the administrative and executive level.

Mr Speaker, I do not want to pre-empt the discussions that we will have. Obviously they will bring their policy, and steer it to the discussion, we will bring our policy, and steer it to the discussion. Let us hope that this is an issue upon which we can find common ground with which both sides of the House are content. The hon Member will have read, in our own Manifesto, that we have things to say about the European Community situation and indeed that many of the issues that exist between the Government of Gibraltar and the Government of the United Kingdom is precisely because this Government of Gibraltar seeks to protect Gibraltar's legislative and administrative and jurisdiction independence in all facets in the context of the European Union and does not concede to the view or does not concede to any agenda that may or may not exist that somehow our membership of the European Union abrogates our constitution, or suspends our constitution rather, in that respect. For that reason we have made proposals in our own 1996 Manifesto for dealing with the situations that arise thereby. Mr Speaker, the question of the timing is clearly a matter that the Government have wanted to choose. We have considered that this is an appropriate moment to proceed. We have been engaged in discussions between ourselves. We have been engaged in discussions with the United Kingdom. We have been wanting to fit this in, in accordance with a timetable that would signal importance but would not signal somehow that this was a life and death urgency, that the idea that somehow Gibraltar has got to rush to this before the 31st December of the year 2000. Obviously, we would like to achieve our objectives as soon as possible but we have not wanted to proceed in a way which adds strenuous and unnecessary pressures to what, I suspect, will already be a difficult and complicated exercise. I actually do not agree with the last remark made by the hon

Gentleman which is that somehow the work of the Committee this side of the Election will be lost. Certainly the Parliament dissolves and therefore the Select Committee with it and the Select Committee could not continue to meet during the interregnum but certainly I think a new Select Committee, either similarly constituted or differently constituted, depending on the results of the Election, obviously we are confident that it will be similarly constituted, would be free to adopt and to take note of and to ratify and to assume and adopt the evidence taking and the records so far of any previous Select Committee. I do not think it is a case of having to start again by taking witnesses and inviting again people to submit their submissions. The incoming Committee would just say "we adopt the examination of this or that witness as our own. We adopt the submission tendered, by a gentleman mentioned by the Leader of the Opposition, or any others and proceed on that basis". It would not be time lost. I think it is time gained in a process which is an important process but it is more important to get it right than to rush into it. Gibraltar needs to do this in a way which is compatible and consistent with all the other things that are also important to Gibraltar and which neither detract from the importance of this nor detract from the importance of those other things. Of course, the hon Member knows that I am talking about political and economic stability and therefore we will want to seriously proceed with this important agenda but not as if this was the only important agenda that Gibraltar needs to have addressed and to have processed and to have progressed. It is an important agenda but it is not the only important agenda to the people of Gibraltar. Therefore I am gratified to learn that we shall be able to adopt the constitution of this Committee by consensus in the House and that I look forward to convening the first meeting of it so that we can agree as a committee how we are going to go about this business and establish methodologies and approaches to the conduct of this exercise which we think is what we will do in our first meeting.

Question put. The motion was carried unanimously.

HON P C MONTEGRIFFO:

Mr Speaker, I have the honour to move the following motion:

"That this House approves the making of the following rules:

1. The Income Tax (Qualifying Companies) (Amendment) Rules 1999.
2. The Qualifying (Category 2) Individuals Rules 1999.
3. The Qualifying (Category 4) Individuals Rules 1999."

Mr Speaker, this motion arises from the need to seek the approval of the House pursuant to Section 98(2) with regard to the introduction of certain Regulations that will amend provisions of the Income Tax Ordinance. The three sets of Rules are relatively straightforward and I will summarise them initially at this stage. The first Rule, the Income Tax (Qualifying Companies) (Amendment) Rules will have the effect of replacing the Financial and Development Secretary with the Finance Centre Director as the statutory authority for the granting of qualifying company status. The second Rule, the Qualifying (Category 2) Individual Rules will have the effect of introducing a new regime for what has come to be known in Gibraltar as "HINWIS", essentially wealthy retirees, replacing the current regime. Thirdly, the Qualifying (Category 4) Individual Rules introduces an altogether new category of what are called "REPS" in Gibraltar, namely a regime which will facilitate the importation into Gibraltar of certain expertise not locally available.

Mr Speaker, dealing with the first of those Rules, the Income Tax (Qualifying Companies) (Amendment) Rules, this is the most straightforward of the three Regulations the House is being asked to consider. This simply substitutes the Finance Centre Director for the Financial and Development Secretary when it comes to defining, in the Regulations who is responsible for granting and regulating qualifying companies. It is nothing more and nothing less than the final legislative piece in the jigsaw which we have

been putting together over the last few months to transfer these responsibilities from the Financial and Development Secretary to the Finance Centre Director. It therefore completes that legislative part of the programme.

The second set of Rules, the set of Rules which has to do with what was formerly known as "HINWIS" is more substantive and has been the subject of extensive consultation with the industry. As the House is aware the current Rules have been a success. We have attracted a large number of retirees to Gibraltar. They have given a significant boost to the property market, in particular in the higher levels of the property market but we have had many representations that the Rules contain deficiencies and indeed should be improved per se. The most important features of the new Rules are properly the following; firstly, whilst a new (Category 2) individual will require to have, for his use, available accommodation in Gibraltar, that will now be available accommodation which he is required to have in terms of purchase. He has to purchase property rather than is the case today which he can purchase or rent. The requirement therefore tightens somewhat in that a (Category 2) individual has to undertake a commitment that he has to purchase property.

Secondly, the approved residential accommodation has to be occupied by this individual for no specific period in the year. The previous Rules, hon Members might recall if they work in this field, in any event, actually stipulated a minimum period of time which the property had to be occupied by such an individual. That has been an unnecessary constraint on the normal tax planning which such an individual would make when determining whether to base his residence in Gibraltar. Therefore, what we have done is taken away that constraint. It now becomes simply a matter for the individual and it advises to determine how long he spends in Gibraltar.

Thirdly, the new Rules clarify certain types of business activities which these individuals can undertake. The previous Rules were essentially silent on this. Originally these Rules were designed for pure retirees - people who simply retire and do nothing else.

Many people who fall into this category are people who remain active in a sort of semi-retirement function and therefore we have sought to clarify in the new Rules certain business activities, for example directorships of exempt companies, which such individuals can undertake notwithstanding the fact that they would have this tax status in Gibraltar.

Fourthly, and importantly, the Rules require that there be continuing compliance with the conditions set out in the Rules. There was a gap in the previous Rules to this effect. This now provides that if conditions are not met on a continuing basis the Finance Centre Director can revoke a Certificate given to a (Category 2) person and that includes, importantly, failure to have paid the prescribed level of £10,000 tax which the Regulations provide. It also clarifies the position in respect of the position of certain members of the (Category 2's) family. The current Rules are silent about how a spouse and children are treated. If a person becomes a tax resident on this basis is the wife and minor children included in that? The new Regulations make clear that they are included for the purposes of the exemptions. There are transitional provisions in the Rules as one might expect. This gives current "HINWI" holders the right either to retain the certificate under the old Rules or to elect to fall under the new Rules. It will be obvious from the terminology I have used that we have also decided to change the label that describe these individuals rather than the explicit and somewhat undesirable label of high networth individual, we are now simply substituting it with a much blander (Category 2) qualifying individual. We believe, that these changes will considerably help to improve a programme that, as I said, has already enjoyed some considerable success.

The third and final category, the Qualifying (Category 4) Individual Rules is, as I said at the beginning of this motion, an entirely new set of income tax Regulations. They build on the existing "REPS" status which was introduced by the last administration and if hon Members will recall essentially the existing "REPS" status allows certain types of companies to bring in expertise that is not available in Gibraltar and to have a person providing that

expertise, have a cap on his tax of £10,000 per year. We have received many representations, Mr Speaker, to the effect that a further category was needed to attach itself to the middle management level, in other words, people that are required in Gibraltar in respect of which there is no expertise in Gibraltar but in respect of which the high rate of personal tax in Gibraltar makes it unattractive for them to come and work here. That is what these new Rules seek to do. These new Rules seek to fill that gap at middle management level for skills not available domestically. Essentially, the Rules provide for a tax of £5,000 and the provision of a new job created on the back of such new individual that is brought into the economy. The political view we therefore took is that whilst £5,000 is obviously half of £10,000 the need for a new local job to be identifiably created at the same time as a (Category 4) individual is brought in was also of great significance. Indeed, one would argue, of more significance than simply £5,000 into the Government exchequer. Therefore we felt that balance between providing a new facility for middle managers but at the same time making sure that local employment would complement such a certificate was a very acceptable political position to adopt. Like the existing "REP" rules I have mentioned that only people who have skills not available in Gibraltar would be able to access the certificate. The certificate would be for a three year period although, admittedly, renewable for another three year period in various circumstances. The original "REP" rules passed by the last administration was for a five year period. We have taken the view, in these Rules, that the amendment be brought to the House on the original Rules the last administration introduced that we have modified that three years is more appropriate because it would actually focus employers in the need to train up local people, even though as I say there is provision for a single further extension of three years if necessary. On the tax position, I have mentioned that £5,000 is the tax payable by an individual as long as he earns no more than £50,000 a year. If he goes beyond that then he clocks straight into the £10,000 payment which is the payment of a (Category 3) status.

Mr Speaker, the Rules only apply in the commercial sector to exempt and qualifying companies. This has been the subject of a

great deal of discussion with the industry and in particular with those in the industry that are local taxpayers. The Government very carefully considered whether it should not extend this provision to other companies and other practitioners and other business entities other than exempt and qualifying companies. The conclusion we came to is that although the arguments are strong for local companies to have a similar facility it is important at this stage when we are in the middle of a tax reform exercise, not to blur the distinction which has always existed in Gibraltar since 1967 between the onshore and the offshore tax regime. That system in itself has created, one could argue, an element of distortion, an element of unfairness but it has held its own reasonably well for that period of time. We felt it prudent to preserve that ring fencing and not to open it up until of course a more user-friendly tax system across-the-board is introduced in the medium term. We are, therefore, not oblivious Mr Speaker to the very legitimate representations made by the local industry in this regard but we hope that it will understand that it is precisely to defend the ring fencing of the offshore regime which we give so much priority to that we are determined not to tinker with one matter that could open the proverbial can of worms.

Mr Speaker, in conclusion, we believe these Rules will make it attractive for employment to be generated in the new sectors that we are trying to encourage, namely captive insurance and investment services. There obviously are potentially a wider use but I think one will find that the Finance Centre Director in the exercise of his powers will keep a close eye on making sure that they are not abused. The purpose of these rules is to import expertise generally not available here and to create activity in new sectors that we are keen to diversify in. I therefore commend this motion to the House.

Question proposed.

HON A ISOLA:

Mr Speaker, if I may just deal briefly with the second point first, the Qualifying (Category 2) Individual Rules 1999. Certainly, as

the hon Member has already said the product that was introduced some years ago following I believe the Price Waterhouse Report commissioned by the last Government has as hon Members recognise been successful. I think that the changes that are being introduced today will improve that product and I am aware of the industry having been consulted in respect of the proposed change to the Rules. One question that springs to mind from the transitional provisions is where the new requirement that is being introduced about the actual purchase acquisition of property where a person on the previous Rules on rental and he now elects to have the new certificate whether that will in any way be affected or whether it will continue on the same terms and conditions as when the original certificate was granted. We could find that in fact someone has a certificate under these Rules that does not actually comply with them. I do not know what thought has been given to that potential problem because I am aware of the number of these "HINWIS" who actually do rent and although we welcome the change in terms of purchase of property I think at this stage because of the success of the product I think it is possible to increase the stakes in making it more beneficial to Gibraltar to have this product. What happens to those who may be left in limbo?

With regard to the new category being introduced for what the Minister described middle managers, the Opposition do not see the necessity for this particular product and not seeing the necessity for this product we are as the Minister himself has identified, aware of the potential problems that this can cause within the current structures of business as it is today. The original "REPS", relocated executives possessing special skills was introduced, I believe, for the same reasons as the Minister has given today which is to assist businesses that are seeking to move to Gibraltar to enable them to bring their experts with them at a favourable tax rate in order to ensure that they are not going to prise up the market by the high tax rates that the rest of us have to pay. I notice that the Minister has said that the intention of these Rules is to encourage the new captive insurance sectors and other, I assume investment services and banking sectors to be able to similarly take advantage of that provision. We feel that

where there is already provision for a £10,000 cap of tax there is not really a need to have a further reduced level of £5,000 and secondly the potential problem which can arise where an exempt company already with a presence in Gibraltar, and a qualifying company, already with a presence in Gibraltar is able unlike their competitors..... I think the Minister has recognised and knows very well the difficulty that there is when people competing with each other are on different tax levels. As the Minister has said this has been the case since 1967, it is nothing new, but when there are people at different levels competing with each other and one is paying 35 per cent tax and the other is paying £20 or £25 pounds a year tax or five per cent if it is a qualifying company, then to have an extra facility which is to now take on people and pay £5,000 it puts them at a further and I think to an extent we are further increasing the gap between the two tiers that we already have and giving them I think a further disadvantage. I accept that it is for specialist skills and I accept that the rules relate to essential but with the limited labour market that we have today and although it is improving by the year as more and more graduates come there is the problem of not enough experienced middle managers, not enough experience because we have not had enough time to have those experienced middle managers in place and a product such as a Chartered Accountant for example there are numerous adverts in the press over the last few months of local companies looking for Chartered Accountants. I suppose the Finance Centre Director will be in a difficult position in refusing an application where he has been shown by the employer that a Chartered Accountant cannot be found in Gibraltar. That is the nature of the problem that I think these Rules will further aggravate and indeed may widen the gap.

Mr Speaker, we have already in the original Bill before this House on the question of the transfer of powers from the Financial and Development Secretary to the Finance Centre Director expressed our reservations as to the need for it to happen. We have already raised our concerns as to the marketing and the licensing being from the same department and as we abstained before we will similarly abstain to this single motion, again, particularly as a

result of our not being in favour of item 3 of the motion, being the new (Category 4).

HON P C MONTEGRIFFO:

Mr Speaker, I am grateful for the hon Member's comments although I regret his lack of support for these measures that have a large element of support from the industry albeit on the basis that everybody would like to benefit from them. Let me take up some of his points. Firstly the last point on the transfer to the Finance Centre Director of the Financial and Development Secretary's responsibilities. I really fail to understand why the Opposition has such a fixation on this matter or this inability to recognise the value of the exercise in question. All that is happening here, potentially, is two things. One, that there is a proper constitutional redefinition of who should be responsible for this issue. In other words, the Gibraltar Government are clearly placing itself in the driving seat as it has been de facto notwithstanding the Financial and Development Secretary's statutory position as the authority that grants licences for exempt and qualifying companies. That surely is a welcome step in the context of general constitutional ambitions for Gibraltar but, secondly, and perhaps much more relevant in an immediate sense is the fact that it simply adds substance to the one stop shop concept which we are trying to create in the Financial Services Unit within the DTI. As hon Members know, Gibraltar is not an easy place to get established in. There are many departments one has to go around, whether it is the ETB, whether it is the Income Tax Office or the Social Security. When it comes to financial services we are making an effort, albeit slowly, to actually bring under one roof the important functions that deal with financial services. One of the very important functions is, of course, the fiscal treatment which companies have. That, really, has been what has driven this transfer from the Financial and Development Secretary to the Finance Centre Director. I would have thought that this was a very sensible suggestion. It is within taxation which of course is a fully defined domestic matter, indeed something which we are constantly at pains to constantly reassert is within Gibraltar Government's competence for all sorts of

reasons from tax harmonisation right through. Therefore, this move is entirely in accordance with that philosophy.

Mr Speaker, the hon Member raised the point with regard to the transition provisions in relation to qualifying (Category 2) individuals and whether rented accommodation would suffice in the new regime. I do not think it would, actually. My reading of the Rules is that the latitude open to the Finance Centre Director does not extend to taking a different view on what represents residential accommodation which is actually contained in the definition Section of the Regulations. Therefore, I think somebody that does want to move into the new Rules would have to buy property but of course he can stay as he is. There is absolutely no difficulty with a "HINWI" staying under his current certificate benefiting from the Rules that currently apply to him.

HON A ISOLA:

Mr Speaker, he retains the certificate which I assume is subject to him continuing to have the things that he had when he originally applied but if the rules are revoked how does that actually happen?

HON P C MONTEGRIFFO:

The transitional provisions make very clear that the Rules are only revoked to the extent that they are not actually relevant in the context of somebody that is still the subject of a certificate issued under them. If somebody wishes to retain the benefit of a certificate under the old Rules it would be governed by those old Rules. In other words, the Rules are there to apply to those individuals in respect of which a certificate remains in force. Those individuals have the choice of moving to the new regime if they so wish.

Mr Speaker, dealing with the Qualifying (Category 4) individuals which the hon Member had more to say about, he has expressed the Opposition's opposition to this measure on the basis that two main conditions were, one that it is not really necessary, not

persuaded of the fact that these Rules were necessary but, secondly, even if they are necessary they are basically unfair to the local industry and therefore they should not be introduced in this fashion. One of the strongest results that emerged from this survey that hon Members are well aware of, of the Finance Centre in 1998, one of the strongest results was the huge difficulty the Finance Centre has in recruiting people, either locals or expats. It is the major constraint to growth. We are trying to redress that position locally through a very vigorous training scheme but these things take time. In the interim what we have is a major problem of people simply not being attracted to Gibraltar and one of the reasons for that, very prominent, is the high level of personal tax. People who are based in Bermuda, where income tax is zero, or based in the Channel Islands where income tax is 20 per cent across the board, are simply not going to come to Gibraltar unless they are paid over the odds and pay 15 per cent tax. That is exactly the thinking that motivated the last administration to pass their Rules and it is exactly the thinking that is motivating us to extend those Rules just to encourage further growth in the business, there is therefore a need, the recruitment is required. There is a problem - high income tax and there is the desire on the Government's part to diversify its economy and to create new areas of activity such as in insurance and investment services. Short of breaking the ring fencing of the offshore and onshore regime, the only way we can deal with this problem as the last administration recognised when it passed the Rules is to do something like this. In other words, to actually create a special category for people who are coming in to grow the economy so that there are jobs, both for Gibraltarians and for expats. I would like to emphasise this point of jobs. We like to believe that this is actually a job creating scheme. It actually requires every (Category 4) individual to have somebody else employed at the same time as he is employed. He actually creates a job that would otherwise not come to Gibraltar at all. Therefore, whilst we continue the distortion that they introduced in their "REP" rules we actually make it much more palatable for Gibraltar by requiring that the job market is grown from locally resident people. We are persuaded therefore that we are responding to a very strong industry demand; that we are trying

to tackle the problem of high tax in Gibraltar on an interim basis. This is not a solution for ever and that we are giving Gibraltar and the Gibraltar economy a job creating mechanism which is actually a very good improvement on the scheme introduced several years ago by the Opposition Members. Thank you.

Question put. The House divided.

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

Abstained:	The Hon J L Baldachino
	The Hon J J Bossano
	The Hon Dr J J Garcia
	The Hon A Isola
	The Hon J C Perez

Absent from the Chamber:	The Hon R R Rhoda
	The Hon T J Bristow
	The Hon J Gabay
	The Hon Miss M I Montegriffo

The motion was carried.

The House recessed at 12.45pm.

The House resumed at 4.05pm.

BILLS

FIRST AND SECOND READINGS

THE UNITED NATIONS PERSONNEL ORDINANCE 1999

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 the First and Second Reading of Bills.

Question put. Agreed to.

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to enable effect to be given to certain provisions of the Convention of the Safety of United Nations and Associated Personnel adopted by the General Assembly of the United Nations on 9th December 1994, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Ordinance gives effect in Gibraltar to the Convention on Safety of the United Nations and Associated Personnel. Hon Members will see that the principal operative section is section 3 which gives jurisdiction to the Court of Gibraltar to try in Gibraltar as if the offence had been committed here certain offences committed anywhere in the world against United Nations personnel. As hon Members I am sure will deduce this Convention is designed to create a patchwork of jurisdictional overlaps and provisions to ensure that those who engage in attacks on United Nations personnel should not be able to take

refuge in other jurisdictions from the offences that they have committed in another jurisdiction. Section 3 lists the offences in question, which hon Members will see are the principal offences of violence. There are corresponding provisions in relation to attacks on UN premises and vehicles and to the issuing of threats from Gibraltar to United Nations personnel whether in Gibraltar or elsewhere. The meaning of a United Nations worker who is defined in Section 6 and the penalties and sanctions are imposed as if the offences had been committed in Gibraltar.

Mr Speaker, this is a piece of legislation that we have been asked by the United Kingdom to apply to Gibraltar by means of the implementation here of the Convention which has been extended to Gibraltar. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON J J BOSSANO:

Mr Speaker, I think we require more information than simply being told that we have been asked by the UK to do it and that it has been extended to Gibraltar. I believe again this is the first time we are doing something in this area by Gibraltar legislation. The actual Convention which was adopted in New York on the 9th December 1994 had not yet entered into force in September 1996 when it was published in the United Kingdom two years after the event. We do not know when it came into force, we do not know if it has been ratified and we do not know whether this has been extended by the United Kingdom to us only or to all its Dependent Territories and we do not know whether all the Dependent Territories are introducing similar legislation. We would like to know these things before we decide whether we support it.

In looking at the actual text one thing that strikes us is that in fact the Convention seems to require two things. One is, that the intentional commission of a serious act be made a crime under its national law. That presumably already irrespective of whether the commission is against a person employed by the United Nations or otherwise, that is to say, the laws of Gibraltar make it an

offence to commit murder, kidnapping or anything of that nature irrespective of whether the recipient happens to be in the United Nations or not. What is different is the fact that it provides an extra-territorial jurisdiction in that the offence committed anywhere else is capable of being prosecuted against an individual who is in Gibraltar and who is suspected of having committed one of those offences somewhere else. That is provided for in Article 10(4) of the Convention which says "each State party shall take such measures as may be necessary to establish its jurisdiction over the crime set out in Article 9 in cases where the alleged offender is present in its territory and it does not extradite such a person pursuant to Article 15". I would like to have an explanation in respect of that element because in the case of the legislation we have got before the House it says that requirement is being transposed into the laws of Gibraltar by Clause 3 which says "if a person does outside Gibraltar any act in relation to a UN worker which if he had done it in Gibraltar would have made him guilty of any of the offences then he shall be guilty of that offence in Gibraltar". As I read it that is us giving effect to the Article I have just read, that is Article 10(4) of the UN Convention. Article 10(4) of the UN Convention says we have to do that if we cannot extradite the offender. There is no reference here to the alternative of extraditing the offender and when he talks about extraditing the offender it says "pursuant to Article 15" to any of the States that have established their jurisdiction in accordance with paragraph 1 or 2. Paragraph 1 is where the State provides in its laws jurisdiction over the crimes set out in Article 9 in the cases where the crime is committed in the territory of that state or on board a ship or aircraft registered in that State, and (b) where the alleged offender is a national of that state. We have a situation where a State can determine that it has jurisdiction over the alleged offender because the alleged offence took place either in its territory or on its ship or on its aircraft or by one of its nationals or by a stateless person whose habitual residence was in that State. It seems to me that when required to recognise that such cases have priority over our rights because it says that we make it an offence in Gibraltar in cases where we do not extradite pursuant to Article 15 to one of the States that has made a provision in that respect. I do not know whether we have got a

problem of extradition in that we may or may not be included in the bilateral extradition treaties existing between the State parties to the Convention. I would have thought that since this Convention says that in the extradition treaties between State parties, those to whom the Convention are extended by the act of extending the Convention, the Extradition Treaties are amended automatically so that these offences form part of those Treaties without the Treaty having to be signed. It seems to me that we cannot be in for one thing and not in for another. Unless we get explanations on the points that we cannot make sense of we will not be voting in favour because we believe, as I said, in relation to the Yugoslav business, Mr Speaker, I believe that if we are voting for or against that thing, we need to understand precisely what it is that we are voting for or against. That is the whole purpose of bringing legislation to the House, I would have thought. So far, neither in the Explanatory Memorandum nor in the introduction of the Bill has neither of those points been clarified.

HON CHIEF MINISTER:

Mr Speaker, I have to say that I have difficulty understanding the hon Member's approach to the legislative process in this House. Whether he supports or does not support legislation appears to depend on whether we are bound to do it or whether we are not bound to do it, whether other people have done it or whether other people have not done it, whether it is identical to the Convention or it is not identical to the Convention. Surely, what the hon Member should do is read the Bill, decide whether as a matter of principle he supports its content or not because we are not legislating here for Botswana or for Bermuda or for anywhere else, we are legislating for Gibraltar and the hon Member has before him a Bill which says that "the Courts of Gibraltar should have jurisdiction to try in Gibraltar the commission of certain offences outside Gibraltar against United Nations personnel in order that United Nations personnel should be given this protection." The hon Member does not express the view on the principles of the matter. Apparently his view of whether he supports the Bill or does not depend on whether he thinks that the content of this Bill is a good idea, but rather the extent to which he

has held it up against the Convention and he has found that it is accurate and that it goes not an inch further than we are required. I have to say, Mr Speaker, that is not the Government's approach. It is irrelevant whether the Government of Gibraltar have not even bothered to check whether the United Kingdom has extended this to other Overseas Territories or not, what the Government of Gibraltar do is say "are we in Gibraltar content to do this? Is this something that the Government and Parliament of Gibraltar wishes to do, yes or no?". Whether or not it has been done in Bermuda or whether or not it has been done in the Turks and Caicos or in any of the other twelve British Dependent Territories does not affect our judgement when we are in principle in agreement with what we are being asked to do. Therefore the relevance of whether it has been extended to anywhere else or not is not, as far as the Government of Gibraltar, a factor. As far as the Government of Gibraltar are concerned it has been ratified by the United Kingdom. It has been extended to us. We have been asked to implement this legislation, which the Government have considered and we are content to cooperate with the work of the United Nations in this way. The point of Article 10(4) is not that one only needs to give oneself jurisdiction when one cannot extradite. I think the hon Member, with respect to him, is misreading that article. What Article 10(4) says is that one can comply with the Convention by either giving ourselves jurisdiction which one then exercises or extradites. Mr Speaker, what this means is that when one has jurisdiction, for example, if after we pass this legislation such an offender comes into Gibraltar the prosecuting authorities of the courts in Gibraltar would have the option either of prosecuting him in Gibraltar under this jurisdiction or extraditing if indeed there is an Extradition Treaty and that is always the case even under the ordinary criminal law of the land..... the fact that the Courts in Gibraltar have jurisdiction to try somebody for an offence is not an obstacle to extraditing that person to be tried for the same or similar offences in other jurisdictions. Therefore, whereas the hon Member appears, if I have correctly understood him, to be interpreting Article 10(4) to say that we only need to give ourselves jurisdiction to try such people, when but only if, we cannot extradite them I believe that that is not a correct interpretation. What Article 10(4) is, I believe,

intending to say is that even if one gives oneself jurisdiction, which one must do, it is a compliance of the Treaty with the Convention either to use that jurisdiction to try the person oneself or to extradite the person to another country that does have jurisdiction. That, I think, Mr Speaker, is the proper interpretation of Article 10(4) and, of course, the fact that we take this jurisdiction does not mean that we cannot extradite. I do not think Gibraltar has bilateral extradition treaties with anybody, in fact, the Government are now working on an Extradition Bill for it to line with Extradition Conventions that are coming through in the pipeline. I do not know who Gibraltar has Extradition Treaties with and, indeed, which bilateral UK treaties may or may not have been extended to Gibraltar. The position, in a sense, does not matter. Once this legislation is in place we will be free to choose either to try people ourselves or to extradite them where it is both possible legalistically and adjudged to be desirable by whoever makes these decisions in Gibraltar.

Mr Speaker, I believe that that is the correct analysis. I would urge the hon Member to form a view of the legislation on its merits. I am assured by the Draftsman that this Bill does no more than implement the terms of the Convention itself in a way which is effective and that is the basis upon which the Government bring the legislation to the House. The hon Member has not expressed the view as to what he thinks of the principles of the Bill and that does not require explanations from the Government. The explanation is that it is to implement a Convention which clearly he has examined them. The Bill is self-explanatory on its face. It is perfectly clear as to what it is intended to do and why and I would have thought that the hon Member's decision as to whether they approve or disapprove in the principle this legislation, which is all that we are discussing at the moment in this Second Reading, does not depend on explanation. The only explanation that the Government can give is that we are bringing this legislation to the House because we have agreed to implement this Convention through this legislation. I would have thought that the hon Member might have raised other matters of principle, about extra territorial jurisdiction which he has said he has difficulty with. It does not raise any such issues, this is not

creating jurisdiction outside, this is creating jurisdiction in Gibraltar for the port of Gibraltar, albeit in respect of acts that are taking place outside. Therefore, I would urge the hon Members to support this legislation which simply aligns Gibraltar with the rest of the international community in measures which are supportive of the work of the United Nations and of officers of the United Nations. That is the principle of the Bill and that people who offend against officers of the United Nations doing their work should have no bolt holes to escape to, either because there are Extradition Treaties or because local jurisdictions have taken jurisdiction under this Convention to try them in their own territories. The hon Member started by saying that this is the first time we are doing something in this area. Mr Speaker, it is the first time, of which I am aware, I am not saying it may not have happened in the past, nor do I know it is true that this is the first time that we are doing something like this. Certainly, it is the first time we do something like this since I have been in the House. It is the first time that the House has been invited to legislate for this sort of thing. This is not a question of having done this before but in the past having done it through some other mechanism. One cannot, by Order in Council, in effect, make amendments to our Criminal Offences Ordinance. I suppose we could but I would not regard it as desirable and I expect that the hon Member would not require as desirable either. This is something which intrinsically affects the jurisdiction of the Courts of Gibraltar in criminal matters and I think it is entirely proper and appropriate that it should be done by primary legislation in this House and the matter has not shrouded in any controversy whatsoever.

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

Abstained: The Hon J L Baldachino
 The Hon J J Bossano
 The Hon J J Gabay
 The Hon Dr J J Garcia
 The Hon A Isola
 The J C Perez

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

The Bill was read a second time.

HON CHIEF MINISTER:

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

. Question put. Agreed to.

THE FAST LAUNCHES (CONTROL) ORDINANCE 1999

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to prohibit the importation, use, ownership or possession of fast launches and certain outboard engines in Gibraltar and in Gibraltar waters and to make provision for matters connected therewith be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill replaces and repeals the Fast Launches (Control) Ordinance and administrative measures ancillary thereto. Mr Speaker, hon Members will recall that the Fast Launches (Control) Ordinance was passed in 1987 and that it basically has the effect of outlawing in Gibraltar vessels with an engine capacity greater than 200 horse power. That piece of legislation has several continuing undesirable effects. In the first place, the 1987 Ordinance did not catch vessels with engines of less than 200 and in fixing the level at 200 horse power in fact propagated the use in Gibraltar of those fast speed boats, usually Phantoms, with engines of less than 200 horse power but which were nevertheless suitable and ideal for very high speed smuggling operations. In a sense the extension of the use in Gibraltar of smaller but faster boats, as opposed to what had been the case before 1987, which was the much larger smuggling boats, in a sense that was a result of the 1987 Ordinance which fixed at 200 the horse power and then liberalised everything less than 200 horse power without realising that they were thereby opening the door for what we now have subsequently come to know as "Phantoms" but not exclusively Phantoms, other speed boats which can travel at very, very fast speeds with engines well below the 200 horse power limit that was fixed by the 1987 Ordinance.

The hon Members will recall that in 1995 they themselves introduced some measures, I believe it was under the Imports and Exports (Control) Ordinance whereby certain restrictions were imposed on the ownership in Gibraltar of semi rigid inflatable boats, basically rubber boats with a solid floorboard and that those restrictions were really limited to having to pay import duty on them and to having to have an authorised berth. The 1995 measure had no impact whatsoever because they did not purport to affect boats other than RIBs and therefore did not capture in any sense the Phantoms which were the ones after the 1995

measures that were commonly used for tobacco smuggling from Gibraltar into Spain. The effect of all this legislation has been quite seriously detrimental to the Marina trade in Gibraltar by outlawing certain bona fide high-spending yacht visitors. The Government have received representations from not just collectively the Marinas' Association but individually from all the marinas in Gibraltar asking the Government to modify this legislation in a way which deals with the desired objective without representing an obstacle to the use of Gibraltar by bona fide yachtsmen which everybody believes is a valuable source of touristic expenditure in Gibraltar. Thirdly, by way of defects, the existing legislation, both the 1987 Ordinance and also the measures introduced by the Opposition Members in 1995 insofar as they affected only RIBs has had and continues to have a detrimental effect on a large number of bona fide speed boat owners in relation to their legitimate leisure enjoyment of their boats. In other words, that people in Gibraltar not engaged in smuggling activities have been restricted not just by the legislation but also by the administrative application of the legislation even when it affects RIBs of less than six metres in length which the hon Members' measures in 1995 did not purport to affect. The measures that the hon Members introduced in 1995 did not affect RIBs less than six metres in length, presumably because the smugglers were not using RIBs of less than six metres, they were longer but in the application of it basically the Police and Customs were forbidding the licencing of RIBs almost of any length including the ones commonly used in Gibraltar for purely leisure purposes and which are incapable of being used for high speed smuggling operations.

Driven firstly by our desire to put into place legislation which catches Phantoms, in other words, all boats that are capable of being used for high speed smuggling of the fast boats smuggling operations, so that Gibraltar should be fully protected from any possibility of resurgence of this activity but also motivated by the representations made to us not just by the marinas but indeed by the Chamber of Commerce to find some other way of achieving that objective which would not continue the detrimental effects to the development of the marinas' business in Gibraltar, the

Government put on its thinking cap and has put together this piece of legislation which I should tell Opposition Members has taken a very long time to put together. The Government started working on this project in late 1996. There has been very substantial consultation. When I explain to the hon Members what the technical principles of the Bill are they will see that it raises terribly complicated boating and marine physics technology issues which are beyond the comprehension of Government and therefore there has been extensive consultation with nautical experts both inside and outside of Gibraltar. There has been detailed consultation with the Attorney-General, with the Royal Gibraltar Police, with the marinas as I have already said, with the Cormorant Boat Owners' Association, obviously with the Captain of the Port, with the Yacht Registry and with the Chamber of Commerce. They have all participated in this. They have all sent in detailed representations, improvements to the legislation, ideas which then had to be looked into, some of them were incorporated into the legislation, others were not incorporated into the legislation.

All supported the objectives of the Bill and the method of achieving those objectives and of course in many cases some of the ideas were not taken on board and others were. The effect of the legislation, as I am sure the hon Members can see from their reading of the Bill, is to create a regime whereby the importation, ownership, use and possession of fast launches is prohibited in Gibraltar. The essential provision of the Bill is therefore the definition of fast launches, because it prohibits all these things, importation, ownership, use and possession, of a fast launch but what is a fast launch? Therefore, the whole philosophy of the Bill is to be found in the definition of a fast launch.

Mr Speaker, hon Members will find that at Section 2, where it is defined, basically it boils down to this, if the launch is more than 60 feet or more than 20 tons it is right out of the regime. It cannot possibly be a fast launch if it is longer than 60 feet or displaces more than 20 tons, because the conventional wisdom and the Government's advise basically, the only shaft which is greater than 60 feet in length and displaces more than 20 tons, which is

capable of travelling at the speed which the Government set in its mind as the one that it did not want people to be able to go faster than, are basically warships. The Government have wanted to pitch the restricted speed at between 30 and 35 knots and if it is longer than 60 feet and displaces more than 20 tons then it is basically a warship. Those are the first constraints, so therefore by definition we are talking about boats that are shorter than 60 feet and displace less than 20 tons. If it is less than 60 feet in length and displaces less than 20 tons there are then two conditions that it has to meet in order to be classified as a fast launch. One is that it is fitted with one outboard engine in excess of 115 prop shaft horse power or more than one engine in aggregate adding up to more than 115 prop shaft horse power or alternatively that it has an inboard or fitted with some other sort of engine, there is a sort of hybrid inboard/outboard type of engine, and the boat has a power to weight ratio in excess of 100. The definition of power to weight ratio is also explained there. It is basically a fraction in which the upper figure is the total prop shaft horse power and the lower figure is the boat's displacement in tons. Mr Speaker, how does this work? The Government are advised by all the experts that it has consulted that this definition of fast launch affects those few, if any, local bona fide boat owners. We believe that there may be one or two and I will explain in a moment how we intend to deal with that. Government are advised that the value of 100 in the power/weight ratio effectively catches only boats which are capable of exceeding a speed of 33 to 35 knots. The Government toyed with the idea of simply imposing a straightforward speed limit but was advised that this was just very difficult to police and to enforce. All the experts agreed that by defining power to weight ratio in this way and by setting the maximum permitted power to weight ratio at the figure of 100 it does not catch and cannot catch and would not catch boats with a speed capacity of less than about 33 knots. The Government are of the view that leisure boat owners are perfectly well accommodated at these which are really very fast speeds, 33 to 35 knots, but those speeds are insufficient for the benefit of fast launch smugglers because the Police, GSP, Customs and Port Department launches which are exempt from these provisions are capable of very, very much faster speeds

than 33 to 35 knots. Therefore, the philosophy of the legislation is to impede speeds that smugglers require whilst permitting speeds that bona fide leisure boat owners would wish to be able to access.

Mr Speaker, the power to weight ratio part of the formula, hon Members will see from the definition, only applies to boats fitted with inboard or other types of engines other than outboards. If one has an outboard engine one is subject to (a.) of the definition which means that if the boat is fitted with an outboard engine of more than 115 prop shaft horse power or outboard engine having an aggregate of more than 115 prop shaft horse power then it is a fast boat regardless of such complicated things as power to weight ratio. The need for that is that the measurement of power to weight ratio is not practical in the case of those small light boats where it is very difficult to measure and therefore in the case of small boats which are in effect speed boats the limit is placed at 115 brake horse power. Most European countries have a maximum limit of horse power. Purely as a matter of interest, not that it is relevant, in Spain the limit is set at 125 horse power for the possession of outboard engines.

Mr Speaker, the Bill also prohibits registration of fast launches in the Gibraltar Registry. Why does the Bill do that? Well, hon Members will know that when they took the measures that they took affecting RIBs in 1995 many of these boats were simply exported from Gibraltar and continue to operate, usually actually and ironically given the attacks made on Gibraltar by Spain, from Spanish ports. Indeed, many of these RIBs that were exported are now operating from places like Ceuta and Estepona and other ports of this nation. There was, for a very long time, a continuing guilt by association for Gibraltar because these boats kept their registration markings even though they no longer had any physical connection with Gibraltar. We believe that given Gibraltar's historical connection with boats of this sort, Gibraltar needs to be protected so that there should be no connection between these boats and Gibraltar and we believe that allowing people who do not live in Gibraltar to register in the Gibraltar Registry and fly the Gibraltar Registry flag on the stern, boats

which they would not be allowed to have or possess in Gibraltar, is to risk a continuation of guilt by association through registry when in fact Gibraltar has disposed of these vessels, at least as far as the RIBs are concerned, in 1995 and we through Police and Customs actions have seen to it that the Phantoms cease to operate from Gibraltar as well when we came into office. Therefore we believe that if this legislation is to have completely the desired effect there ought to be no association of these fast boats with Gibraltar and that includes their registration.

Mr Speaker, hon Members will see that the Bill gives the Police, Customs and other Law Enforcement Agencies, the GSP, a power to stop and question persons on board boats and to take names and addresses. Then the hon Members may have spotted a particular provision which is really the essential part of that which is that the Police is required to pass that information on to anybody that has suffered an accident with a speedboat. At the moment we have got the rather curious situation that if one gets run into by a speedboat in Gibraltar waters, because no criminal offence has been committed and it is a civil matter, if one wants to sue the other boat because they have crashed into yours and damaged your boat or because they may have run one over and caused one personal injury, the Police actually are not obliged even to tell the victim "I know the name of the person who did this to you" because it is entirely a civil matter. The hon Members will see that the provisions of clause 9 sub-section (4) which in a sense has nothing to do with the control of fast launches but it is just a convenient opportunity to legislate this in Gibraltar, is if the Police has information of the name and address of the driver or owner of a fast boat involved in an accident they are obliged to pass on that information to any person that they have reasonable grounds to believe has or may have suffered damage or personal injuries alleged to have been caused by the use of that vessel in Gibraltar waters.

Mr Speaker, the Bill in clause 13 creates a regime for the issuing of temporary permits to visitors. If there are bona fide yachting visitors to Gibraltar who may arrive in Gibraltar in a boat which forms part of the fast launch definition, provided that they obtain a

permit from the Customs when they report at the Reporting Berth, and obviously Customs and Port Department officials there will be instructed to point these regulations out to visiting bona fide yachtsmen in boats that they think may be in that category then they are able to visit Gibraltar, what we are achieving or trying to achieve is that Gibraltar should not become a base for fast launch smuggling boats but should be a viable destination for bona fide yachting tourists who may be in a fast boat, of which there are many up and down the coast and which are plain yachts, usually owned by wealthy persons who are high-spending tourists and as the Regulations presently stand they cannot visit Gibraltar and that is thought by the Chamber of Commerce to be an unnecessary restriction on the development of that valuable tourism market.

Mr Speaker, just to outline one or two of the other principal more important parts of the Bill, clause 14 creates a regime for the granting of permits to residents in cases where they would fall foul of the rules but the authorities are satisfied that they would not engage or allow their boats to be used in the activities which this legislation is intended to protect Gibraltar from. Mr Speaker, hon Members will also see here, although they are aware of its existence because for two years now in the Estimates there has been this item of expenditure, fast boat compensation, that is if as a result of the passage of this legislation, somebody's property which has been legal in Gibraltar until now becomes unlawful then of course the Government will compensate them for it unless they are in receipt of a residence exemption permit or would be given a residence exemption permit if they were to apply for one. One only gets compensation if either one does not apply for a permit, applies for one and does not get it but one would not get it if one does not apply for one and the Chief Secretary is satisfied that if one did apply it would be issued. This is not a pawn shop. This is compensation for people who are genuinely deprived of the opportunity to continue to enjoy their property in Gibraltar which until now may have been lawful.

Therefore, in summary, the Bill represents many, many months of careful and detailed work, extensive consultation, extensive

advice on highly technical nautical matters. Read together with the Tobacco Ordinance it creates a regime which both protects Gibraltar from any risk of resurgence of the fast launch activity and, at the same time, enables the marina trade in Gibraltar to re-attract or to once again be able to attract so that the economy of Gibraltar can benefit from the genuine bona fide high spending yachting tourist to Gibraltar. But, we will obviously keep a close eye on how the legislation works, in the practice of it, since the overriding requirement is the continuing suppression of fast launch smuggling activities. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON J J BOSSANO:

Mr Speaker, I think we recognise the difficulty that there is technically in doing this exercise of drawing a dividing line but I have to say that it is difficult to follow, from the explanation, how it is that this achieves it because I would have thought, on the surface of it, if we have a situation where before vessels that did not exceed 60 feet were fast launches if they had a 200 horse power engine and now we have those with 115 horse power engine it ought to mean that this affects more boats than the other one did. If the other one was an impediment to people coming into Gibraltar and it affected a narrower range of boats, then frankly I cannot follow how it is that we are extending the definition of the fast launch to cover boats with smaller engines and at the same time as we are doing that we are making it possible for the boats that were previously being prevented no longer to be prevented, if I have explained myself. Mr Speaker, it seems to me that we have two contrary arguments one of which seems to defeat the other. I think the other point that the legislation raises is that, of course, if I am correct in that the new definition of a fast launch extends the vessels to categories that previously would have not been covered, it must follow that the possibility of such vessels of other nationalities passing within the area of our territorial waters must be greater. There are now more vessels covered than previously and I would have thought on the relevant Customs and GSP and RGP and so on, to police this

area must be greater if not they have to be on the lookout for vessels with smaller engines than was the case in the past as I understand it in the 1987 Ordinance if they came into our waters they had to go to the Reporting Berth and clock in, as it were. In changing the definition I also note that we have replaced what were previously "Controlled Waters" by "Gibraltar Waters". I think in the 1987 Ordinance it was "Territorial Waters" and then in 1988 it was changed and now in the new one we are calling it "Gibraltar Waters". As far as I know this is the first time in the laws of Gibraltar that we call it "Gibraltar Waters" but they are the same as the area defined as British territorial waters which has given us headaches in other circumstances. Presumably, if we have a situation where we have got a requirement that a boat should not have an engine that is more than 115 horse power and we have been told, as a matter of interest, that Spain has one that is 125, is there not a possibility that we will be seeking to stop boats with 120 horse power engines which would be too small to be fast boats in Spain but too big to not be fast boats in Gibraltar, given the fact that we are talking about presumably boats passing through our waters would be intercepted by us, I take it, under this legislation? Because there would be people who would be using the boat within the three mile limit, say, of the East coast. Anybody going through there in a boat which would not be illegal in Spain but illegal for us, we would be requiring our Law Enforcement Agencies to stop that boat on the grounds that what he is doing is in breach of this law. I do not know whether that is something that has been thought about and, if so, whether it is the intention that that should happen. Somebody suggested to me that maybe we can confiscate all the Spanish Police boats in the area for being in excess of 115 horse power. Certainly, I think if we can be given an assurance that that is going to be the result I think we do not need to discuss the general principles or whatever.

Clearly, the regime I think seems to be designed to be as foolproof as it is possible to devise it and therefore we would like when the Chief Minister exercises his right to reply to be given some indication as to whether in fact this is going to create an extra burden which will now mean that we will have to have our

people on the lookout for a much higher volume of movement of smaller horse powered driven vessels than was the case in the past because the legislation in the past did not catch them.

HON CHIEF MINISTER:

Mr Speaker, certainly the hon Member is right. This does affect more boats than it used to because it includes, for example, now all the Phantoms. There is no legislation in Gibraltar today that prevents the operation in Gibraltar of a Phantom. They are controlled by Police action and by Customs action, but there is no legislation that prevents them so all of them are included. The hon Member is also right when he says that we are therefore including some new ones but if the advice that the Government have had is correct about the formulae and about who uses what type of boat, the additional ones that we have included that were not included before are the boats that really only smugglers would be interested in using subject to there being one or two legitimate, there could be. I personally know of one person who is certainly not a smuggler that would fall foul of these provisions. On the whole, and subject to that, it can be cured by the residence permit, on the whole the body of boats that has now been included are the ones that would be useful to smugglers and not to tourists. Tourists do not travel around in small speed boats. They travel around in large speedboats powerful but more yachts than speedboats. On the other hand, we have freed from the control the sort of boats that tourists are more likely to be in. So it is true that we have moved the line in a way which includes people that were not presently included and they are, on the whole, the smugglers but in moving the line we have also excluded, we are told, the category of boats which would be used by bona fide yachting tourists. But, of course, there is bound to be people who are caught by the definition somewhere down the line. Mr Speaker, the fact that difference in between the sort of boats that tourists would use, bona fide tourists and bona fide boat people would use, and the smugglers would use, that is of the essence of the whole philosophy of this legislation. If that does not work this legislation will not prove to be effective and it will have to be revisited. The hon Member said that it was difficult

to follow how it worked. Mr Speaker, I have tried to master the technicalities of this myself. It all stems from the fact that the sort of boats identified that tourists would use, which would pass this power to weight ratio formula by definition is not useful to a smuggler because it is not capable of going fast enough. This is not that there will not be speedboats. Smugglers can try to smuggle in boats with outboard engines of less than 115 horse power but we are advised that the combination of these Rules are that with a boat of less than 115 horse power one will always be outrun by the Police, Customs and the GSP who will always have the capacity to travel faster than that and to catch them. That is the principle of how this works, if it does work, which we believe it will and hope it will on the basis of the advice that we have been given.

The hon Member raises the question of the workload of the enforcers. As I indicated to him earlier the Police and Customs have seen this. They are content with it. They believe it is a useful tool. There is, in principle, more workload whereas before in the case of an outboard engine one could look at whether it was more than 200 horse power. Now in the case of an outboard engine one just has to look whether it is more than 115 horse power. That, in itself, has not changed the enforcement technique. It is, however, more complicated in the case of an inboard engine or an inboard/outboard engine because whereas before all one had to do was look in the manual or look wherever one looks in the engine for this sort of thing and see, is it more than 200 horse power? Now one has to work out the power to weight ratio which basically means getting the boat up on a hoist with something called a load cell in between the boat and the hook of the crane which basically measures the boat displacement in tons and it is just a reading on a scale. How the Police will enforce it is up to them. I assume that experience will tell them what sort of boats are likely to be in breach of that and they will police it in that way. The Gibraltar Waters point, Mr Speaker, there is no point there relevant to this Bill. I just happen to believe that the House of Assembly in Gibraltar should not be shy of using the phrase "Gibraltar Waters". I am not sure what controlled waters are which in effect then include the whole of what we know as

Gibraltar Waters. It seems to me that it is just somebody's desire to call it something other than Gibraltar Waters for some, perhaps, political reason. I think they are Gibraltar Waters. We call them Gibraltar Waters. The definition in the Schedule of Gibraltar Waters coincides with British waters around Gibraltar in terms of the median line and the three mile limit, where the median line is not relevant and that is just a case of calling a spade a spade, rather than something else. The hon Member made the point that would it raise policing difficulties, enforcement difficulties, the fact that there are boats in Spain of 125 horse power engines I do not know, Mr Speaker, what the answer to that is. There are, of course, at present a whole category of boats that are lawful in Spain but unlawful in Gibraltar. Therefore, it is not a new situation that people who lawfully drive around their boats in Spanish waters become illegal the moment they cross the point of the runway on the eastern side within three miles off the shore. That is the case with anybody driving a RIB which are not unlawful in Spain. It is the case of anybody driving a boat with a horse power of more than 200 which are illegal in Gibraltar but not illegal in Spain in the case of inboard and outboard engines. I suppose that the Police will continue to operate that in the same way. All I can say to the Opposition Members in support of the Bill is that this legislation has done the rounds of everybody and his dog who possibly has anything to do with the enforcement that might be affected by this and that really it is such a technical piece of legislation that the Government have drawn heavily on the advice that it has received and when we have received advice from one person, we have exposed it to the other interested parties "do you agree with this? Do you disagree? Does this affect your view of the matter?" and this is the result. This is the product and I would hope that the hon Members will be able to support the legislation on that basis.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE PENSIONS (AMENDMENT) ORDINANCE 1999

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Pensions Ordinance by raising the minimum retirement age for prison officers to 55 years at the option of the officer, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the origins of this Bill were actually in the case of a particular Prison Officer who wanted to stay on longer than the rules permitted him. Hon Members know that under Section 8 of the Pensions Ordinance at present the Governor may require any public officer in the public service to retire after he attains the age of 55. In special cases, with the approval of the Secretary of State at any time after he attains the age of 50. Under sub-section (ii) of Section 8, however, certain Officers have a compulsory retirement age of 55 as opposed to the compulsory retirement age of 60 which normally applies to other non-industrial officers. The Officers in question are Fire Officers, Police Officers or Prison Officers. Sub-section (ii) of Section 8 of the Pensions Ordinance presently reads "In the case of any Fire Officer, Police Officer or Prison Officer the Governor may require such Officer to retire from the Public Service under the Government at any time

after he has attained the age of 50 and retirement shall be compulsory for every such Officer on attaining the age of 55".

Mr Speaker, the Government, in consultation with the staff, consider it appropriate to alter that so that in the case of existing Prison Officers they have the option to continue beyond the age of 55 if they wish. In the case of existing Prison Officers who are defined as anybody who was in post before the 10th July 1998, they have the right to keep the present regime which is to go at 55 if they want to and to apply for early retirement at 50 if they want to and therefore in their case they get the option to stay on if they want to. Their right is unaffected but they get the option to stay longer if they want to stay longer than 55. In other words, they can opt out of the compulsory retirement age of 50. However, in the case of new recruits the Government, as a matter of policy, have decided that the retirement age for new Prison Officers in the future the compulsory retirement age should be 60 and not 55 on the basis that at ages 55 to 60 a person is still capable of carrying out the duties of a Prison Officer. That is what this legislation does. I am not sure that there is very much more than I can add to this except to say that indeed if there is a case to do this, in the case of Police Officers as well, we were not asked to look at the case of Police Officers we are asked to look at the case of Prison Officers by a Prison Officer. We have limited our legislative proposals to them only. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON J C PEREZ:

Mr Speaker, in the opening paragraph and indeed in the explanation that the Chief Minister has given, the amendment has the effect of raising the minimum retirement age. It says that the amendment has the effect of raising the minimum retirement age for Prison Officers to 55 years at the option of the Officer. This, in our view, is totally misleading. If hon Members look closely at Section 8 of the principal Ordinance they will find that today, as the Ordinance stands, the retirement age of Officers is already 55 and they cannot themselves opt to leave earlier. It is the Governor

that has the power to ask them to retire between the time they attain the age of 50 and their age of retirement at 55. A Prison Officer has no power under the Ordinance to choose to leave before the age of 55. In that respect the minimum retirement age is not being raised. What the proposed amendment does is to remove the power of the Governor to ask the Prison Officer to retire before the age of 55 and once he has attained the age of 50. This moves a Prison Officer away from the special provisions applicable to Fire Officers and Police Officers and includes them in the provisions applicable to all other public servants where the Governor may ask them to retire at 55 but they can carry on until 60. The effect of this is that the retirement age of the Prison Officer now becomes 60. This, of course, has the effect of changing the multiplier in counting years of service in order to attain a full pension. The last published Gazette of the 24th June contains amendments to the Regulations of the Pensions Ordinance altering the multiplier for those Prison Officers in service today that before attaining the age of 50 opt out of their present conditions and in favour of the new conditions.

Mr Speaker, it might be that a Prison Officer might have had reason to approach the Government, but my understanding is that the Prison Officers collectively have not been consulted on this matter and as far as the Opposition Members are concerned, if what we are trying to do is give the option for the Officer that has got into the Prison Service late in his working life and is not able to accumulate sufficient years for a relatively decent pension and has not attained 20 years service where the multiplier then changes and increases to allow the Officers to attain a full pension during their working life then I think what we needed to do with this Ordinance was to give the option to all Officers including the Fire Brigade and the Police Officers to opt out under those special circumstances and obviously since the Governor retains the power to allow these Officers to retire at a particular age in terms of fitness then only those Officers who would be fit to carry on would be able to continue. But if the option is going to be given to Officers in this position where they have not got sufficient years accumulated and therefore they see themselves having to retire at the age of 55, whereas they could continue, then I think

that that option should be given to all the Officers that have this legislation apply to them and I would think that more consultation is needed. The other point I wish to make is that the changes in the Regulations, and I understand it is the Regulations and not the main Ordinance but it is the only opportunity one has to mention this, does more than change the words "Prison Officers". It changes the words more for either which does not seem to help clarify the meaning of the language used in the clause which is already rather confusing as it is. Perhaps the hon Attorney-General can give us some useful explanation of how that ought to read grammatically in the English language but certainly it does not read to me well now and the amendment that we are doing certainly seems to confuse more the issue.

The final point I would like to make is that the retrospective date of the 10th July 1998 seems to mean nothing because if that is the date when the last Officer was recruited and it is a date used so that it applies to every Officer recruited after that date, but none has been recruited which is what I understand from the Chief Minister that everybody in service today will have the option to opt out or stay with the conditions as they are, then the current date is sufficient without having to mention a retrospective date of the 10th July. The current date includes everybody that is in post today and from now onwards that changes although certainly we would be against again forming a two-tier system with old people having one pension system and new people having another. It creates problems for the future and the idea of amending the legislation giving the option to the Officer depending on the years of service or to the Officers covered by the Regulation without taking the Prison Officer completely away from those provisions would seem to me to be the better way of dealing with the situation. We would therefore give notice that we are voting against the amendment.

HON J J BOSSANO:

I think there is one point that I would welcome clarification on. That is that the Chief Minister said that this had been initiated as a result of representations received from one particular individual.

Presumably, given the nature of the changes that are being proposed the individual in question must have been somebody that, under the existing law, had to go at the age of 55 and wanted to be able to carry on till the age of 60, because that is the only thing the law is being changed on. As my Colleague has pointed out if compulsory retirement is at 60 for the Civil Service and at the discretion of the Governor, at 55, and in the Prison Service it is 55 instead of 60 and 50 instead of 55, then presumably what somebody wanted was to be able to carry on working until 60 which he was not able to do because the maximum age was 55 and what this does contrary to what the Ordinance claims to be doing, if the Ordinance says to amend the Prison Ordinance by raising the minimum retirement age for Prison Officers to 55 at the option of the Officer I do not think the Ordinance says that at all. I think the Ordinance does two things, it raises the maximum compulsory retirement age to 60 for all new entrants and gives the options to existing Officers to move to the age of 60 if they choose or to stay as they are. Presumably, that is because somebody wanted to move and without this change he was not able to move. Is it that there is somebody that will be able to move because the date of the 10th July has been put there because if that Officer had to go at the age of 55 then he is no longer in a position to benefit from these changes so that the changes are not going to be of any use to the person that wanted it given that the legislation says that in order to be able to carry on the person must apply, at least, when he is aged 49 years and 10 months, sixty days before the age of 50. Unless the person making the representations that he wanted to carry on to 60 knew he wanted to carry on to 60, 10 years and 60 days ahead of time, which would be rather odd, this is of no use to him.

HON CHIEF MINISTER:

Mr Speaker, I am not certain that there is any point in clarifying anything now given that the hon Member has already said that they intend to vote against. He said that he would give notice of his intention to vote against so therefore if my words are incapable of persuading him to the contrary I am not sure that I should be replying to him at all. My understanding, Mr Speaker, is

that this is useful. This does work for the person notwithstanding the hon Member's explanation but, however, I think the hon Members may have misunderstood me. The Government have not done this in order to accommodate one person. What I said was that the request made on behalf of this one Officer had brought this situation to the attention of the Government and, having considered it, the Government decided to take Prison Officers out of the realms of people that had to retire at 55. That is basically the policy decision that the Government have made to put future Prison Officers, by which we mean Officers recruited after the 10th July 1998, in the same position as all other non-industrial public servants.

On the question of insufficient consultation, hon Members obviously forget that we are not affecting the accrued rights of anybody. They are in the happy position either of being able to keep their regime that they presently have or opting for this one if it suits them. Therefore, it is not normal to consult or ask people whether they wish to be given a gift or not. They are not being deprived of any accrued rights. The alteration of the multiplier and the formula for calculating their pension and the number of years of credit that they get through the increased multiplier to compensate them for the fact that they have fewer years in which to earn the pension that is not depriving them. That presumably goes into their calculation of whether they want to keep the existing regime or opt for the new one. The only people who do not get the option and therefore are stuck as a matter of Government policy with the new regime are the people who could not possibly be consulted, namely people that are not yet in post. I do not know exactly why the date of the 10th of July has been chosen by the Personnel Department for this, nor can I tell him for certain that there has not been a recruit since after the 10th July. If there has been a recruit since the 10th July which is a big if as I do not know whether there has or there has not, he will certainly have been told that he is recruited on new terms as to compulsory retirement age and options of this sort. Having said that, I do not know whether there has been any recruits after the 10th July and if there has not been I do not know why the date of the 10th July was thought to be relevant. I think it has something to do with the

date upon which the Regulations were published, which may have been published with that date. I do not know when. I would have to look at the Regulations to see if there is any reason connected with those Regulations why it is necessary to pin all this on the 10th July. I cannot say what the reason for that is. Mr Speaker, I would urge the Opposition Members to reconsider their position. I do not see how it can be objectionable, which would be the only reason for them voting against, to give existing employees an option which they do not presently enjoy without affecting or depriving them of rights which they presently have. I suppose the hon Members can choose to vote against it on the basis that they do not agree that future recruits should be deprived.....[INTERRUPTION] Mr Speaker, the fact that they would like it also to be given to Police Officers is not a reason to deprive Prison Officers. I would have thought that as far as Prison Officers were concerned this was an advantage to them. It gives existing Prison Officers the option to work for another five years which may gain them access to a higher pension than they would otherwise be entitled to. I would have thought that even if the hon Members feel that this should be extended to others, nevertheless it is entirely a matter for them.

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

For the Noes: The Hon J L Baldachino
 The Hon J J Bossano
 The Hon J J Gabay
 The Hon Dr J J Garcia

The Hon A Isola
 The Hon J C Perez
 The Hon Miss M I Montegriffo

Absent from the Chamber: The Hon T J Bristow

The Bill was read a second time.

HON CHIEF MINISTER:

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

THE ADMINISTRATION OF ESTATES (PAYMENTS) ORDINANCE 1999

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to amend the law relating to Statutory Legacies and Payments out of Estates 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, there are two main reasons for bringing this Bill to the House. In the first place it amends the law relating to payments out of Estates without the need for Probates or Letters of Administration. The new law now being brought to the House would bring Gibraltar more into line with the UK position as set out in the Administration of Estates Small Payments Act, 1965. At present, payments can only be made from certain bodies, for example, Savings Banks and Friendly Societies and for small amounts. The Bill extends the current position by adding credit institutions to the institution from which payments can be made

and by increasing to £5,000 the sum that can be paid out. Payments in these circumstances are often necessary when the family of a deceased person requires immediate access to funds held in the name of a person who has died. The need to wait until the formalities of either Probate, if there is a Will, or Letters of Administration if there is no Will, often causes hardship. The new law will remedy this position. Secondly, the Bill significantly increases the level of Statutory Legacy for a spouse in the case of a person dying without having made a Will. As the House is aware, when a person dies without having made a Will the general law determines how the property of such a person's Estate is distributed to the next of kin. The amounts to which a spouse is entitled has remained unchanged in Gibraltar for many years. It is much lower than in the UK. Accordingly, the amount of statutory legacy payable to a spouse from an Estate is being increased from the current level of £20,000 to £150,000. In the UK the Statutory Legacy for spouses is £125,000 if there are children and £200,000 if there are no children but other specified relatives. In Gibraltar we have had the same figure always for the Statutory Legacy for a spouse irrespective of whether there are or are not children. Accordingly, rather than change that basic structure we have adopted a compromise figure of £150,000 to apply to the Statutory Legacy here whether or not there are children to that particular marriage. The devolution of the remaining Estate will remain unaffected and in accordance with current legislation. We believe that there is a need to increase the level significantly because many people still do not make Wills and with life insurance payments and other savings the old £20,000 is often exceeded.

Mr Speaker, I have given notice of various amendments to the Bill and it is probably useful for me to take hon Members through these now. Firstly, the first amendment seeks to delete sub-clause (2)(b). Essentially, the drafter of the Bill sought to rationalise provisions that exist in the Savings Bank Ordinance by including them in this Bill. In other words, provisions that exist in the Savings Bank Ordinance to make payments out without Letters of Administration or Probate. The Section that he was seeking to repeal actually has other important elements and

therefore we have reverted to retaining that section, albeit increasing the amounts which are payable out of Savings Bank to the figure of £5,000. Secondly, the words "a registered society as defined by the Friendly Societies Ordinance" requires to be added to sub-section (3)(i) in order to make payments from Friendly Societies also possible and we are deleting the words "the Post Office". Thirdly, clause (7) is being deleted. Clause (7) was to have introduced an amendment to the Cooperative Societies Ordinance pursuant to which members have certain interests under Cooperative Societies. On reflection, it has been thought that that provision is not really relevant in the context of Estates and therefore should be deleted altogether.

Apart from these amendments, the only other amendment that is relevant is the amendment to introduce Sections 62, 63 and 65 of the Administration of Estates Ordinance to this Bill to make clear that the saving provisions that apply to the Ordinance generally also apply to this amending Ordinance. In other words, that this Ordinance does not change the law relating to death that has occurred before this Ordinance has come into force or any other aspect of any situation that applies before the law has been passed. We have done that following some representations we have received after the publication of the Bill. We believe that this Bill puts Gibraltar up to the UK in these two important issues. It is really for social and family purposes that the Bill is being introduced. I commend the Bill to the House.

HON A ISOLA:

Mr Speaker, we will be supporting the Bill. We are aware of the cases in which hardship can be caused to people in having to wait for Probate or Letters of Administration to be granted before they can have access to funds. In relation to the Statutory Legacies we note what the Minister has said. We agree with the principle of increasing the amount and maintaining it on the same basis as we have done in the past, namely one figure for spouses with children as opposed to the two strands in the United Kingdom. We will be supporting the Bill.

Question put. Agreed to.

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

Question put. Agreed to.

THE COMPANIES (TAXATION AND CONCESSIONS) (AMENDMENT) ORDINANCE 1999

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to extend the concessions in relation to income tax to certain legal entities registered in Gibraltar other than companies, 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 short Bill is to make provision for the tax benefits presently applied to exempt companies to apply to other vehicles. As the House will be aware the Government are contemplating the creation of other forms of legal entities to further enhance the services available to the Finance Centre. These include possible amendments to the limited partnership regime and introduction of foundations. It is obviously desirable that as and when we have passed legislation to give effect to those new entities that we should be able to extend taxation benefits to any entity that is not Gibraltar-owned and otherwise meets the conditions stipulated in the tax

exemption. This Bill achieves that aim by extending that the regulation-making process to the Minister for Trade and Industry to apply the benefits of the Ordinance to legal entities other than companies. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON A ISOLA:

We are aware of the representations made to Government by the industry for these provisions. We will be supporting the Bill bringing those provisions into place and we will await the Regulations to see how in fact they will be introduced but certainly we will support the Bill.

Question put. Agreed to.

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

Question put. Agreed to.

THE FACTORIES ORDINANCE (AMENDMENT) ORDINANCE 1999

HON J J NETTO:

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

Question put. Agreed to.

SECOND READING

HON J J NETTO:

I have the honour to move that the Bill be now read a second time. The Bill does nothing but repeal provisions in the Factories Ordinance affecting safety requirements in respect of lifting equipment. Let me hasten to put hon Members minds at ease by saying that the requirements are not lost. They have been replaced and I shall explain how. On the 3rd June 1999 the Government published the Factories Lifting Operations and Lifting Equipment Regulations which give effect to articles in respect of lifting equipment in Council Directive 89/655/EEC on the Minimum Health and Safety Requirements for the use of work equipment by workers at work as amended by Council Directive 95/63/EEC. The Regulations place duties on employers, on self-employed persons and certain persons having control of lifting equipment, for persons at work who use or supervise or manage its use or of the way it is used to the extent of their control. The Regulations make provisions with respect to the strength and stability of the lifting equipment, the safety of lifting equipment for lifting persons, the way lifting equipment is positioned and installed, the marking of machinery and accessories for lifting and lifting equipment which is designed for lifting persons or which might be so used in error, the organisation of lifting operations, the further examination and inspection of lifting equipment in specified circumstances, the evidence of examinations to accompany it outside the undertaking, the making of reports of fire examinations and records of inspections and the keeping of information in the reports and records. The provisions repealed by this Bill have been made redundant by the more extensive health and safety requirements of the Regulations. The intention is to bring this Ordinance and the Lifting Equipment Regulations into operation on the same day. Mr Speaker, I will be proposing some amendments at the Committee Stage. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill

HON J L BALDACHINO:

Mr Speaker, the Bill actually does what the Minister has just said and thus introduces into our laws the directive that the Minister has mentioned. But if I am right the directive says that the minimum provisions should be the ones that the directive says but as we are actually legislating on the question of safety it appears to me that when we repeal Section 27(i) under that Section obviously it was more the safety of the person in that Section than what we are actually introducing. There are certain provisions in the law now which are higher than what we are actually introducing under the Ordinance. What the Ordinance says under Section 27(i), the section that we are repealing, it says that "the hoist or lift should be thoroughly examined at least in every period of six months". If we look at what we are replacing, once in six months, the lift in six months, and the hoist in twelve months. The other thing I would like clarification on is that the Regulations state a "competent person". Under the Regulations I have been looking for an interpretation of what is a competent person and there is no definition for that, whilst under Section 27(1) which we are repealing a person that was only able to carry out an examination was somebody who had a certificate in writing by the Director under the Factories Ordinance. I understand that the employer is the one who is responsible but when we talk about "competent persons" is it that the employer decides who is the competent person? Because there is no definition here and it could be anybody. The Regulation does not say who it is.

The other thing is, Mr Speaker, that under the Ordinance, Section 27(2) once an examination was carried out and an inspection was carried out the person has to enter it or attach it to a general register within 14 days of carrying out the inspection or the examination whilst under the Regulations it now states under Section 10(1)(ii)(b) it says "as soon as it is practicable make a record of the inspection in writing". Really, there is no time limit, it just says "practicable" and therefore my understanding is that what we are repealing actually makes much better sense in this area than what we are actually putting in its place.

The other thing is, Mr Speaker, I know that the Minister is proposing to pass an amendment in the Committee Stage, yet again what he intends to amend obviously alters what was the original proposed amendment of the Bill because in his amendments, cranes again are introduced whilst in Section 3(b) crane was removed and I obviously thought that cranes had been removed because it was going to be covered by the principal Ordinance and was not being covered by the Regulations. I do not know where it is. There was a lot of spelling mistakes in that amendment and I thought maybe that the amendment was just to put right the spelling mistakes but it appears that it does not only do that, the amendment now puts cranes back into what is being repealed. I would like confirmation if that is going to be the case because it obviously makes a difference to the Regulations.

There are other things, for example, in the Factories Regulations the ones that were introduced on the 3rd June amendment of Factories Building Regulations for example and the Regulations if the Minister would care to look at that section 12(g) deletes the figure 15 Regulation 80 which Regulation 80 of the Building Regulations, yet Mr Speaker, on (f) of the Factories Building Regulations (f) says by revoking Section 28 to 30 and 33 to 56 but it makes reference to Section 28 which should also be revoked if that was the case and the Factories Regulations because under Regulation 80, 28 is not being removed. It is still there and it does not exist because it has been repealed.

Mr Speaker, before we make a decision on how we will be voting, we would like if the Minister can explain to us why has it been necessary in the cases where the Ordinance already had a more stronger position on safety has been minimised obviously to keep to what the directive says. The directive also says that if Regulations are of a higher standard it does not necessarily mean that it has to be amended only if it were of inferior standards. Could we have those explanations before we make a decision on how we are going to vote on this one?

HON J J NETTO:

Mr Speaker, the hon Member said and if I quote him rightly he said that "the existing regime is a much better system than the last one in some areas than the Regulations which have been introduced". That is not the view which is being shared amongst any particular person in the Health and Safety Advisory Council which really are a number of professionals, not just the Senior Factory Inspector but it has the Chief Environmental Health Officer from the Environmental Agency, the Admiralty Safety Officer, the Divisional Officer from the City Fire Brigade, the Superintendent of the Royal Gibraltar Police and the representatives of the Transport and General Workers' Union and the Chamber of Commerce. I have to say that when the various drafts have been widely circulated in the Health and Safety Advisory Council the view of everyone, the professional and the social partners, have been that the Regulations did not dilute in any extent what has now been revoked from the principal Ordinance. I have to say that no one has said to me either verbally or in writing that we are now providing less standards of health and safety as a result of revoking those clauses from the principal Ordinance and introducing the Regulations. It is not something which I have heard before.

One of the other points that the hon Member said raises the question of competent persons and the register. My understanding is that the competent persons are a number of people, I believe there are three or four, which are registered and they will continue to be the competent persons in the registry. That is my view. I can look it up and we can clarify that matter.

Finally, on the question of the cranes, my understanding, and again I will look into this, is that what the Legislation Unit has done in order to do a more neat exercise, has been to remove, not just from the principal Ordinance, but from the various other Regulations, anything which had to do with lifts, with hoists, with ropes, tackle, etcetera and to provide all of them under the Regulations. That is the way it has been designed to have that effect.

HON J L BALDACHINO:

Yes, and the cranes, will they be covered by Regulation or will they be covered by the principal Ordinance?

HON J J NETTO:

That is my understanding but again I will come back on this issue and clarify it. That has been the logic and the way that they have designed and drafted the Regulations. Therefore, there is nothing more I can add at this stage, Mr Speaker.

Question put. The House voted.

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

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

The Bill was read a second time

HON J J NETTO:

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

Question put. Agreed to.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

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

1. The United Nations Personnel Bill 1999.
2. The Fast Launches (Control) Bill 1999.
3. The Administration of Estates (Payments) Bill 1999.
4. The Companies (Taxation and Concessions) (Amendment) Bill 1999.
5. The Factories Ordinance (Amendment) Bill 1999..

THE UNITED NATIONS PERSONNEL BILL 1999

Clauses 1 to 7 and the Long Title

Question put. The House voted

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

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

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

THE FAST LAUNCHES (CONTROL) BILL 1999

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

Clause 2

HON CHIEF MINISTER:

Mr Chairman, in the definition of "Fast Launch" we should delete the words "gross tonnage" and insert the word "displacement" in their place. That is on the second line, so that it would now read: "Fast launch means a vessel which does not exceed 60 feet in length overall or 20 tons displacement", which I am told is the nautically accurate way of expressing that, although gross tonnage is a measure of displacement as well but this is the correct way of putting it. In Clause 2, in the definition of "outboard engine" the word "internally" should be "integrally", means a marine propulsion system whose power is derived from an internal combustion engine mounted integrally and immediately above its power transmission component.

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

Clauses 3 and 4 were agreed to and stood part of the Bill.

Clause 5

HON CHIEF MINISTER:

Mr Chairman, here there is a small typographical error which I have not given notice of. In sub-clause (2) the word "or" should be "of", "to own an outboard engine of more than 115 nautical.....".

Clause 5, as amended, was agreed to and stood part of the Bill.

Clause 6

HON CHIEF MINISTER:

Mr Chairman, here the amendment, although it is done by way of deletion of the whole sub-clause 6(3) and the insertion of a new one, it is just that it is easier to do it that way but for explanation purposes but the effect of the amendment is to delete item (a). That would now read "it shall be unlawful for a person to own or use in Gibraltar or in Gibraltar waters an outboard engine which does not have the correct manufacture and identifying model". In other words, it no longer forms part of the definition that it should have more than three cylinders. The reason for that is that in fact three-cylinder engines would have the effect of lowering..... a three-cylinder engine can be an 80 horse power and things of that sort. In order for this to be consistent with the 115 horse power rule, it cannot be three cylinders and four cylinder engines are necessarily bigger than 115 horse power. The smallest four-cylinder engine I understand is 125 or something to that effect. It is completely superfluous now to the equation and indeed this is a hangover from a very early draft of the legislation which has never been taken out.

Clause 6, as amended, was agreed to and stood part of the Bill.

Clauses 7 and 8 were agreed to and stood part of the Bill.

Clause 9

HON CHIEF MINISTER:

Mr Chairman, it says "ate of birth", it should be "date of birth", in line four.

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

Clauses 10 to 12 were agreed to and stood part of the Bill.

Clause 13

HON CHIEF MINISTER:

Mr Chairman, here is an amendment which is not just by way of correction. I indicated earlier that they would all be by way of correction but this one does respond to a representation that has been made to the Government since the Bill was published and that is that the regime for Visitors' Permits is that they can be given for basically two periods of seven days provided that such permits may be extended for any further period or periods for the sole purpose of enabling the vessel to undergo repairs and that was put in because the marinas said people might want to bring their boats to Gibraltar for repairs that may take more than 14 days, why put Gibraltar's marinas out of this business? That is why it says "repair" at the moment. Since the Bill was published the representation has been made that the facility should also be available to bona fide yachtsmen who would have been given a Visitors' Permit to stow their boats in a decommissioned way in Gibraltar during the winter season. Hon Members will know that what a lot of these people do is that they have their boats somewhere in the coast and that they come down for the summer season to drive around and then they leave them in storage for winterisation. They winterise the boats. One marina has said why deprive Gibraltar of that business, it is good business for the marina, they charge and they have asked us whether we would add the words "or storage" after the word "repair" in that proviso

so that the permit could be for more than 14 days if it was to undergo repairs or storage at a bona fide marina.

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

Clause 14 was agreed to and stood part of the Bill.

Clause 15

HON CHIEF MINISTER:

Mr Chairman, just to delete words, in sub-section (2), sub clause (ii), which do not make sense and which are the hangover, it stayed there after some amendments to delete the last six or seven words "in default of which no prosecution may be brought", which are, firstly, completely nonsensical, so that the section will read "any fast launch or outboard engines seized or detained under sub-section (1) above and has been liable to forfeiture shall be retained in the custody of the Police or Customs Officers, as the case may be, until any criminal proceedings brought in respect thereof are concluded or it is decided that no such proceedings should be brought, whichever is the sooner". To then go on to say "in default of which no prosecution may be brought" is meaningless and also change the comma for a full stop.

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

Clauses 16 and 17 were agreed to and stood part of the Bill.

Clause 18

HON CHIEF MINISTER:

A typographical error, the second "or" on the fourth line should be "of". It is exactly the same typographical error as before "outboard engines of more than 115" not "outboard engines or more than 115".

Clause 18, as amended, was agreed to and stood part of the Bill.

Clauses 19 and 20 and the Long Title were agreed to and stood part of the Bill.

THE ADMINISTRATION OF ESTATES (PAYMENTS) BILL 1999

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

Clause 2.

HON P C MONTEGRIFFO:

Mr Chairman, sub-section 2(b) is to be deleted in accordance with information offered to the House at the second reading.

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

Clause 3

HON P C MONTEGRIFFO:

As previously indicated, the words “the Post Office” to be substituted by the words “a registered Society as defined by the Friendly Societies Ordinance”.

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 P C MONTEGRIFFO:

As previously explained, Clause 7 is being deleted and then a new clause is being introduced as follows:-

Amendment to the Savings Bank Ordinance

7. Section 14(2)(1) of the Savings Bank Ordinance is amended by substituting “£5,000” for “£2,000”.

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

New Clause 8

HON P C MONTEGRIFFO:

Mr Chairman, add new Clause 8 as follows:-

“Supplemental

8. Sections 62, 63 and 65 of the Administration of Estates Ordinance shall apply to this Ordinance mutatis mutandis”.

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

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

THE COMPANIES (TAXATION AND CONCESSIONS) (AMENDMENT) BILL 1999

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

THE FACTORIES ORDINANCE (AMENDMENT) BILL 1999

Clauses 1 and 2 stood part of the Bill.

Clause 3

HON J J NETTO:

Mr Chairman, as proposed in my letter, I would like Clause 3(b) to be amended. After the word “words” should be replaced by “hoists and lifts, chains, ropes and lifting tackle, cranes and other lifting machines”.

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

Clause 4 and the Long Title stood part of the Bill.

Question put on the Factories Ordinance (Amendment) Ordinance 1999.

The House voted.

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

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

THIRD READING

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to report that the United Nations Personnel Bill 1999; The Fast Launches (Control) Bill 1999, with amendment, The Administration of Estates (Payments) Bill 1999, with amendments; The Companies (Taxation and Concessions)(Amendment) Bill 1999; The Factories Ordinance

(Amendment) Bill 1999, with amendments; The Insider Dealing (Amendment) Bill 1999, have been considered in Committee and agreed to and I now move that they be read a third time and passed.

Question put.

The Fast Launches (Control) Bill 1999; the Administration of Estates (Payments) Bill 1999; and the Companies (Taxation and Concessions)(Amendment) Bill 1999, were agreed to and read a third time and passed.

The United Nations Personnel Bill 1999; the Factories Ordinance (Amendment) Bill 1999; and the Insider Dealing (Amendment) Bill 1999.

The House voted.

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

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

The Bills were read a third time and passed.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Friday 9th July 1999, at 10.30am.

Question put. Agreed to.

The adjournment of the House was taken at 6.25pm on Wednesday 7th July 1999.

FRIDAY 9TH JULY 1999

The House resumed at 10.40am.

PRESENT:

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

GOVERNMENT:

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

OPPOSITION:

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

IN ATTENDANCE:

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

COMMITTEE STAGE

The Hon the Attorney-General moved under Standing Order 7(3) to suspend Standing Order 7 (1) in order to proceed with the Committee Stage and Third Reading 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 Pensions (Amendment) Bill 1999 clause by clause.

THE PENSIONS (AMENDMENT) BILL 1999

Clauses 1 and 2 and the Long Title

HON J C PEREZ:

Perhaps the Chief Minister might have found out what the significance of the 12th July 1998 was, which he said he was not sure about? Could we perhaps have an explanation of that?

HON CHIEF MINISTER:

I regret that I have not had the opportunity to do that but if the hon Member is interested I will certainly find out and write to him to explain to him the significance, if any, of the date. If it has no significance then it does no harm either.

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 Gabbay
 The Hon Dr J J Garcia
 The Hon A Isola
 The Hon Miss M I Montegriffo
 The Hon J C Perez

Clauses 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 Pensions (Amendment) Bill 1999, has been considered in Committee and agreed to 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 Dr J J Garcia
 The Hon A J Isola
 The Hon Miss M I Montegriffo
 The Hon J C Perez

The Bill was read a third time and passed.

PRIVATE MEMBERS' MOTION

HON J J BOSSANO:

I beg to move the motion of which I gave notice that "This House rejects the annual decision adopted by the General Assembly on the recommendation of the Special Political and Decolonisation Committee, (Fourth Committee), which, inter alia, urges the United Kingdom and Spain: 'to continue their negotiations with the object of reaching a definitive solution to the problem of Gibraltar in the light of relevant resolutions of the General Assembly and in the spirit of the Charter of the United Nations'.

It further calls on Her Majesty's Government not to support in the Fourth Committee this year, the re-adoption of this decision or its recommendation to the General Assembly for consideration in the 1999 Session."

Mr Speaker, this is a motion which in our view ought to be able to pass through the House unanimously and without there being a great deal of need to argue the merits of the motion since, in fact, it seems to us to be consistent with statements that have been made in the United Nations on behalf of Gibraltar. We believe this is an opportune moment to bring the motion to the House, particularly having just passed a motion to set up a Select Committee to look at the Constitution in all its aspects including the question of decolonisation and on the basis that we are doing that on the premise that Gibraltar's decolonisation is a matter for us and the United Kingdom and not a matter for the United Kingdom and Spain which is what the General Assembly every year urges the United Kingdom to do.

As far as we are concerned the bilateral process between the United Kingdom and Spain negates the right to self-determination of the people of Gibraltar and we have always been opposed to it. Let me say that as far as we are concerned by rejecting the view of the General Assembly we are in fact doing no more than this House did when the Legislative Council adopted the position demanding the right to self-determination in 1964 which was the view of the LegCo Members prior to the 1964 Constitution and after the 1964 Constitution and which was transmitted to the Committee of 24 following the General Election of 1964. The Committee of 24 originally, in 1965, recommended talks between the United Kingdom and Spain on Gibraltar and I think it is important to note that at the same time they made the same recommendation about the Falkland Islands. They recommended that the future of Gibraltar should be a matter for discussion between UK and Spain, taking into account the interests of the Gibraltarians and that the future of the Falklands should be a matter for discussion between the UK and Argentina taking into account the interests of the Falkland Islanders, 34 years ago the United Kingdom rejected both in the Committee of 24. They said no to both until 1973, when the UK did a U-turn on Gibraltar but maintained a position on the Falklands. In 1973 the General Assembly, on the 14th December, passed Resolution 2353(XXII) which was carried with the support of the United Kingdom. The

United Kingdom did not oppose it and that called for negotiations between the United Kingdom and Spain to commence taking into account the resolution previously passed which was General Assembly Resolution 2429(XXIII). In 1973 when this happened in the General Assembly, Señor Pinies heralded it as a major breakthrough for the Spanish side and the establishment of what has since been called by Spain "the doctrine of the United Nations on the question of Gibraltar". The "doctrine" was supposed to have been established in 1973 by this resolution. The resolution referred to the talks previously mentioned in Resolution 2429 and in 2429 what the General Assembly had done was to call on the United Kingdom to terminate its colonial rule in Gibraltar by no later than the 1st October 1969. In Resolution 2429 it regretted the United Kingdom's failure to comply with a previous Resolution 2353(XXII) which in December 1967 had rejected, by a vote of two to one, the 1967 Referendum and contained a reference to the principle of territorial integrity. I am placing this as the background to this motion because it has always been our view that that threat, joining of these motions, means that if one supports what is being passed today in the United Nations which talks about the preceding resolutions of the UN, by implication one is supporting everyone of those resolutions that went before it and led to it. In 1985, with the start of the bilateral process under the Brussels Declaration the United Nations passed a resolution which welcomed the start of that process and described it as putting into place the negotiating process foreseen by General Assembly Resolution 2353(XXII) of the 14th December 1973. So there can be no doubt that in 1985 the United Nations, with the support of the United Kingdom welcomed the start of the bilateral process and described it as the process envisaged in 1973. That welcome with the United Kingdom's acceptance implied that the UK was at the level of the United Nations signaling that in our case self-determination was not applicable and giving the Spaniards the arguments that in our case the territorial integrity was applicable as the 1967 resolution had suggested and in fact it linked us back to that resolution of 1969 saying we should be decolonised by the 1st October. There is, of course, something that happened in 1969 which is the creation of the Constitution

that we have today but that did not decolonise us otherwise we would not be needing a Select Committee to finish the job.

The resolution will once again appear before the Fourth Committee and that will be reflected in a decision which will be approved without a vote and which will go to the General Assembly. In June 1998 the Chief Minister told the Committee of 24, in respect of this resolution, "the Fourth Committee continues with your recommendation the same old annual now tired consensus calling for a continuation of the sterile and fruitless bilateral dialogue with the United Kingdom and Spain". What we are saying is that we in this House should reject the same old tired consensus resolution dealing with sterile and fruitless bilateral dialogue and ask the United Kingdom to do the same. The Chief Minister told the United Nations Committee of 24 in June 1998 "I ask you to break with this bankrupt text of the so-called consensus resolution". I am asking this House to break with that so-called bankrupt text of a consensus resolution. Again this year the consensus was described as "sterile and fruitless" and the Committee of 24 was asked not to recommend its continuance. Let me say that we do not think, and we said so last year, that in fact the Committee of 24 recommends these bilateral talks between UK and Spain under consensus. We do not think it does and we think that all that it does is to say that the matter will be kept on the agenda for next year subject to whatever directions the General Assembly or the Fourth Committee may give from the text that we have seen of the documents. Of course, there is a very simple reason why the Committee of 24 does not need to recommend to the United Kingdom the bilateral dialogue. It is interesting that in the consideration of the Falkland Islands this year the Committee of 24 has recommended to the United Kingdom a consensus based on bilateral dialogue with Argentina. The reason why we do not think they recommend it for Gibraltar and they recommend it for Argentina is because the United Kingdom has refused and continues to refuse and ignores the recommendation and in the case of Gibraltar they do not need to recommend it because in fact the United Kingdom has accepted that recommendation a very long time ago and therefore the real culprit in this is not the Committee of 24 and it is not the Fourth

Committee but it is the United Kingdom. As far as we are concerned, we can hardly ask other people to block a decision which has been drafted, as it has been the case since this thing first appeared, the actual wording was the result of a joint effort between the Spanish Ambassador to the United Nations and the British Ambassador to the United Nations. Consequently the rest of the international community were being asked to support a text agreed between two of its Member States. To ask the others to overrule the United Kingdom as the administering power is a perfectly legitimate thing for us to do as a colony. It is not something that shows the remotest chance of prospering and therefore it seems to us, getting the United Nations to overrule the administering power, so therefore we ought to mount the attack ourselves on the administering power and get them not to promote what we are asking the rest not to support.

In our view the United Kingdom is to blame for this situation and it is to the United Kingdom that this House should address its request and that in fact should be reinforced when Gibraltar appears before the Fourth Committee in October of this year. The fact that the Foreign Affairs Committee of the House of Commons has recognised, for the first time, that the present bilateral talks under that consensus decision of the General Assembly and the Fourth Committee ought to be terminated and replaced means that at least we have got an argument for saying that it should be terminated. Whether it is replaced or not replaced and what should replace it is a different issue but certainly we have now got for the first time recognition on the part of the House of Commons that supports the view that has been put by Gibraltar to the United Nations that the process should not continue. We believe that this opportunity that we have, an opportunity that comes between the meeting of the Committee of 24 and the meeting of the Fourth Committee, would enable us, in our view, to send a very clear signal that the process is doomed, that nothing is going to bring it back to life, that it should be given up and by taking a common position on this issue I believe we are taking an important step to give a very auspicious kick start to the work of the Select Committee of the House which we agreed the day before yesterday. I commend the motion to the House.

Question proposed.

HON CHIEF MINISTER:

Mr Speaker, the Government, as is well known, do not share the Opposition's long-held view about the consequences and dangers implicit in the Brussels Process itself and instead we trace the areas of difficulty to other conceptual difficulties which are reflected in the Brussels Process but which are not necessarily limited to it. The Government agree and have always defended the position that to participate in any bilateral dialogue, whether it is outside or inside the Brussels Agreement, to participate in any process which is bilateral between the United Kingdom and the third party territorial claimant, Spain, automatically puts the discussions in the realms of problems between the United Kingdom and Spain which can only be territorial dispute problems and do not recognise the fact that the primary player and the primary rights are the rights of the people of Gibraltar and their claim to exercise the right of self-determination which is why, even though we do not reject the Brussels Process conceptually, for the reasons that the hon Members do, and even though we do not believe in the context of the assurances on sovereignty, that the Brussels Process has the dangers for the reasons that the hon Members consider that it has the dangers, notwithstanding all that, we do not participate in the Brussels Process talks unless and until the structure of those talks is modified to correct what we consider to be the fundamental flaw which is the bilateralism of it. For us the fundamental flaw flows from the bilateralism of it and therefore we do not attack the Brussels Process generically, what we say is the Brussels Process, whilst it does not create a separate own voice for the people of Gibraltar, is not a process of dialogue that we can participate in and that would remain true if it was not the Brussels Process but some other process. Mr Speaker, I am sure that there is common ground between Government and Opposition on many aspects of the United Nations Annual Consensus Resolution which I hope we can convert into a resolution before the day is up, that we can both subscribe to.

We believe that the resolution needs to be much more specific in identifying the aspects of the United Nations resolution that we object to because the hon Members know that they will not get the Government side to sign up to a motion in this House which is capable of being interpreted as subscription to the Opposition's long-held views about the Brussels Process and their reasons for it even though we have other reasons for not participating in the Brussels Process unless it is modified. Their position is different. Their position is that even if the Brussels Process were modified they would not wish to have anything to do with it for other reasons. That is not the Government's position. That is the Opposition Members position and therefore we would wish the motion to reflect the fact that we are, in expressing a view on the consensus resolution, that we are expressing a view of the consensus resolution and on no other thing. I should also say I do not know if the Leader of the Opposition who has proposed the motion has considered one or two potential pitfalls and, indeed, dangers in the language of his resolution. In citing from the United Nations Annual Consensus Resolution text he has honed in on the words "to continue their negotiations with the object of reaching a definitive solution to the problem of Gibraltar in the light of relevant resolutions of the General Assembly and in the spirit of the Charter of the United Nations". I know, because I know the hon Member's politics, and I know what his views are, I know that the words that he intends to highlight from that sentence are the words "to continue their negotiation", whereas in fact to the outside objective reader it could mean and it could be interpreted to mean that we are conceding that the relevant resolutions of the General Assembly and the spirit of the Charter of the United Nations are against us and that in highlighting this particular sentence from the UN's Consensus Resolution, this House is really saying "let us not continue negotiation which intend to apply the relevant resolutions of the General Assembly and the spirit of the Charter" because that in turn is capable of interpretation as this House conceding that the Spanish interpretation of what is doctrine, the Spanish interpretation of the spirit of the Charter, the Spanish interpretation of what they regard as the relevant resolutions are against us and whereas he

knows that both he and I have gone to the United Nations since 1992 on the basis that we do not accept, and the United Nations should not accept, that there is anything in the spirit of the Charter of the United Nations that is against us nor do we accept that the doctrine of the United Nations or the relevant Charter or Resolutions of the United Nations are things that we should be afraid of. When he and I use the words "relevant resolutions" we mean the resolution which is, in effect, the declaration of the right to self-determination of non-self-governing people and that is the one that we say upholds our right to self-determination but which the Spaniards say because of preambular paragraph 6 and the no breach of territorial integrity preambular paragraph they say that same resolution means that it is doctrine of the United Nations that we are not entitled to self-determination. Therefore, when I propose the amendment one of the amendments that I intend to propose is that we quote the whole of the resolution of the United Nations and not just three lines which in a sense do not even address the points that the hon Member has addressed in his opening address and which are capable of mis-interpretation as meaning that we are nervous about what the relevant resolutions might be, for what the spirit of the Charter of the United Nations might be.

The hon Member says that the bilateral process by which he presumably means the bilateral process under the Brussels Agreement negates the right to self-determination. We would put it in a different way. We would say that it is not the process that negates the right to self-determination. There is nothing inherent about the Brussels Process that itself negates the right to self-determination. What I believe signals, or what I believe is incompatible with proceeding on the basis that we do have the right to self-determination, is, as I said before, the fact that the structure of the dialogue that it calls for is bilateral in nature between our administering power, on the one hand, and the third party territorial claimant on the other. That would be true of the Brussels Process and any other Process and if that were corrected in the Brussels Process the Government of Gibraltar would be willing to participate in dialogue under the Brussels Process. Therefore, it is the bilateralism nature of the structure of

the talks and not to the Process that the Government of Gibraltar object. The hon Member said that it was the UK's failure to oppose the 1973 Resolution which signalled the UK's view in the United Nations that self-determination was not applicable in Gibraltar's case. That is a deduction that the hon Member makes, but he must know that that is not the United Kingdom's position. It is not the United Kingdom's position either in 1973, even now it is not the United Kingdom's position that the principle of self-determination does not apply in the case of Gibraltar. The United Kingdom's position with which he and I also disagree is that the right to self-determination which they assert that we have is "curtailed" by the Treaty of Utrecht, meaning that the option of independence is not available uniquely in the case of Gibraltar because the United Kingdom considers that the provisions of the Treaty of Utrecht in that respect remain valid. I believe that we agree, he and I, but certainly I can assert that I do not accept that that Treaty provision has validity to have that result but that is the United Kingdom's position. I have not seen anywhere a document. On the other hand there are documents and statements to the contrary where the United Kingdom asserts or signals that the principle of self-determination is not applicable, to quote the hon Member's words, in Gibraltar's case.

Mr Speaker, the hon Member quoted from my speeches in 1998. He could have quoted from many or all of my speeches to the United Nations since 1996 because since 1996 what I have been trying to achieve is that the United Nations should change the text of the United Nations Consensus Resolutions but I have not been asking the Committee to change it in order to eliminate all reference to the Brussels Agreement which really is at the root of the hon Member's fundamental political philosophy. I have been asking the Committee to change the resolution. I have been describing the resolution as tired and sterile and fruitless because of its bilateral nature, because it does not leave a space, an adequate, a sufficient, a proper space at the table that would enable us to participate in dialogue. The process is bankrupt for two reasons as I repeatedly point out to the United Nations. I tell them that it is bankrupt not because it makes reference to the Brussels Agreement and the Leader of the Opposition is dead

against the Brussels Agreement and I come here as his messenger boy. I told them that it is bankrupt for reasons which reflect my policy which is that it is bankrupt and sterile, firstly because it does not recognise the right to self-determination of the people of Gibraltar. It does not assert and declare the existence of the right which is the primary purpose of me and I going to the United Nations in the first place and, secondly, because it calls for dialogue, albeit by reference to the Brussels Declaration but if it were not by reference to the Brussels Declaration I would have the same objection because it calls for dialogue between the United Kingdom and Spain for them to resolve the differences between them and that would be a defect of any resolution that called for such dialogue whether it was linked to the Brussels Agreement or not. If the United Nations Resolution were changed tomorrow to say "and calls on the United Kingdom..... to resolve all their differences....." and made no reference at all to the Brussels Declaration I would still not go to the talks and I would still go to the United Nations to make exactly the same pleas on behalf of Gibraltar as I make. Therefore, the objection, the essence of the bankruptcy and of the sterility and of the lack of fruit of the resolution, the reason why I describe it in those ways, the change for which I asked specifically.....if the hon Member has read all of my speeches in full he will see that I actually asked the Committee how I would like them to change the resolution. I asked them to change the resolution by: (1), declaring our right to self-determination and, (2), by not calling for dialogue which does not make a proper place at the table available in terms of our own voice and I do that for the same reasons that he used to ask for his own voice when he used to go to the United Nations between 1992 and 1995.

Mr Speaker, I do not accept the view of the hon Member that there is no point going to the United Nations and ask them to do something which the United Kingdom Government is itself not willing to do because if the hon Member had himself subscribed to that principle when he was in my job he would not have gone to the United Nations at all when indeed the United Kingdom did not want him to go. If he decides to go to the United Nations in the face of opposition from the administering power it must have been

because he thought that there was something that he could achieve at the United Nations which he could not achieve bilaterally with the United Kingdom. Otherwise, why go to the United Nations to make the speeches that he used to make, full of things with which he knew that the United Kingdom did not agree, full of things of which he knew the United Kingdom was opposed, if it was not what he was really doing is going to the United Nations and said "look, my administering power opposes this but I am appealing to you because you are the guys with responsibility under international law to oversee the process of decolonisation and my administering power's views are not the criteria by which you should be guided". That same principle remains applicable today. The idea that we do not ask the United Nations to modify the consensus resolution because, after all, the United Kingdom and Spain have agreed to it and if the United Kingdom and Spain have agreed to it, then why dare ask the United Nations to change it? What we should do is do battle with the United Kingdom and Spain. Mr Speaker, the United Kingdom denies that we have the right to self-determination in the same terms as he and I have gone to the United Nations to assert it. The hon Member did not say "hang on, what is the point of going to the United Nations to try and persuade the Committee of 24 and the Fourth Committee that I have the right to self-determination uncurtailed by the Treaty of Utrecht? What I should do, which is the United Kingdom's position, is go and persuade the United Kingdom who is the obstacle in the recognition of the right to self-determination uncurtailed by the Treaty of Utrecht". The philosophy that he now recommends to me is therefore not the philosophy, nor the analysis to which he used to subscribe and which he deployed in his decision which the Government support now and always supported at the time of taking Gibraltar's case directly to the United Nations, not just for defensive reasons, to ensure that Spain did not have the open field, but also to try and persuade others of views that we were unable to persuade the United Kingdom and Spain bilaterally or even trilaterally.

Mr Speaker, for all of these reasons and in order that the comment that this House makes on which I hope we can agree, even if we cannot agree on the things that I have just said, that

should not prevent us from being able to agree on those aspects of the resolution with which we both disagree and that would be without prejudice to each other's views and position on the bits with which we disagree. I would like to propose in that spirit and for that reason an amendment to the Leader of the Opposition's motion which would delete all the words appearing after the first two words "This House" and would replace it by the words:

"1. Notes the annual decision adopted by the General Assembly on the recommendation of the Special Political and Decolonisation Committee (Fourth Committee) which reads as follows:

"The General Assembly recalling its decision 42/422 of 10th December 1993 and recalling at the same time that the statement agreed to by the Governments of Spain and the United Kingdom of Great Britain and Northern Ireland at Brussels on the 27th November 1984, stipulates, inter alia, the following:

"The establishment of a negotiating process aimed at overcoming all the differences between them over Gibraltar and at promoting co-operation on a mutually beneficial basis on economic, cultural, touristic, aviation, military and environmental matters. Both sides accept that the issues of sovereignty will be discussed in that process. The British Government will fully maintain its commitment to honour the wishes of the people of Gibraltar and set out in the Preamble to the 1969 Constitution'. Takes note of the fact that, as part of this process, the Ministers for Foreign Affairs of Spain and of the United Kingdom of Great Britain and Northern Ireland hold annual meetings alternately in each capital, the most recent of which took place in Madrid on 1st March 1993, and urges both Governments to continue their negotiations with the object of reaching a definitive solution to the problem of Gibraltar in the light of relevant resolutions of the General Assembly and in the spirit of the Charter of the United Nations".

Everything that I have just read is the Resolution that the United Nations General Assembly passes annually as a consensus, this means without a vote, at the United Nations. Continuing now with the substance of our own Resolution in this House:

"2. Considers that a definitive solution to the so-called "Gibraltar problem" in accordance with the relevant resolutions of the General Assembly and in the spirit of the Charter of the United Nations can only be achieved by the recognition and through the exercise, of the inalienable right of self-determination by the people of Gibraltar.

3. Notes and applauds the fact that between 1992 and 1999 both the current Chief Minister, the Hon P R Caruana QC and his predecessor (currently Leader of the Opposition) the Hon J J Bossano, have called on the Committee of 24 and the Fourth Committee to stop recommending to the General Assembly the adoption of annual consensus resolutions calling on the United Kingdom and Spain to conduct bilateral negotiations between themselves and instead to recognise the right of the people of Gibraltar to be present in talks with their own separate voice.

4. Calls on the United Nations to reflect in future resolutions relating to Gibraltar both a recognition of the existence of the people of Gibraltar's right to self-determination and our right to be represented in dialogue in our own right and with our own voice."

I commend the amended resolution to the House.

Question proposed.

HON J J BOSSANO:

Mr Speaker, I do not think this is an amendment to the original motion. I think this is a motion that endorses what is being done in the United Nations instead of a motion that seeks to reject it. Let me say that in dealing with the points made by the Chief Minister the choice of words in my motion are not my choice, they are his. The only reason why I did not put the entire text and I did

not see any risk of misinterpretation is because I put the bit of the text that he quoted in his speech to the Committee of 24. I do not think it was out of context. He told the Committee of 24 a month ago when the Fourth Committee adopts every year the consensus resolution urging UK and Spain "to continue their negotiation with the object of reaching a definitive solution to the problem of Gibraltar in the light of the relevant resolutions and in the spirit of the Charter of the United Nations", what is the light to which the resolution is referring to? He has just told this House we should not put that there because we are creating a doubt as to what these resolutions mean and we are very clear what they mean. He has just told the United Nations we are not very clear what they mean and that the people of Gibraltar want clarification. The people of Gibraltar want to know what resolutions we are talking about, what the spirit of the United Nations is. Does it mean recognition or the denial of the right to self-determination? He has just told us that my motion in this House is going to suggest that we are doubting that we have the right to self-determination. I do not think my motion does that. He has already done that himself in June. He has already said to the United Nations "does it mean the recognition or the denial of the right to self-determination of the people of Gibraltar?". That is not an assertion of one interpretation. This motion does not open the door to the Spanish recognition. The door has been opened a very long time ago by other people, not by us. We are seeking to close it and I regret to say that whether he intends to or not the so-called amendment seeks to keep it open and therefore we are not going to waste the time of the House or anybody else, Mr Speaker, because it is quite obvious from the response that the gap is not a gap it is an unbridgeable gulf between the two sides of the House. It is not possible in this House for us to seek to reconcile our differences because if in fact we are all agreed that the consensus resolution in the United Nations in October is a sterile, meaningless, bad thing and should not be recommended, how come that we do not reject it? The original motion rejected the resolution. The amendment does not reject it. It notes it. Noting something is endorsing it. I have come to the House asking this House to reject what the United Nations is saying which has just been described as sterile and bad and we finish up with the

proposal that instead of rejecting it we should note it. Fantastic! I am sure that Sr. Matutes would be overjoyed to learn that the House of Assembly has noted the resolution which persistently is being used by Spain since 1985 to say we do not have the right to decide our future. It then goes on in the amendment to note and applaud what he and I have been saying in the United Nations. I do not think it is the business of this House to indulge in self-congratulation. If other people want to applaud let them applaud and if they do not want to applaud it it does not make any difference. I certainly do not need the applause of anybody for anything I have done in the United Nations before or that I hope to do in the future. But let me say that I cannot understand why the Chief Minister, in moving this amendment, shows to make out that I was saying that we should not go to the United Nations. Of course, I went to the United Nations in 1992 against all-out opposition from the United Kingdom. I do not see that there is that all-out opposition from the United Kingdom any more. They seem to be much more content with the present trend of events and that is not surprising when one looks at this resolution which does not even call on the UK. We are asking the rest of the world not to support the consensus resolution and we are not asking our own colonial power because that has also gone from the original motion. We have not got any objection obviously to the first amendment that simply puts the whole text or if he wants he can put the text with all his doubts which I would not have thought is a good thing. It is quite true that I did not quote the whole of the paragraph. I quoted the good bit of the paragraph which was the one that said we do not support and we ask this Committee not to support a resolution urging the UK and Spain to continue their negotiations. I did not quote the fact that what are the relevant resolutions and what are the views on the correct interpretation because if he is inviting the Committee's views, presumably he is opening the possibility that Venezuela or Syria or the Peoples Republic of China might agree with the Spanish interpretation. I would not have thought it was a very wise thing to invite the Committee of 24 to give us an interpretation.

There is no doubt that the Spanish position, whether we like it or whether we do not, is consistent with the sequence of events and

there is no doubt that the 1973 resolution of the United Nations, drafted by the British Government..... if the Chief Minister cares to go back and search the records he will find that this was something which at the time the United Kingdom view put to the Government of Gibraltar was that the initiative for this resolution which came from the Chairman of the Committee who was then from Venezuela was an attempt to bounce the British Government into negotiation with Spain. They tried to rescue the situation and indeed they had Maurice Xiberras and Sir Joshua Hassan on standby in case they needed to rush into the United Nations to counteract the Spaniards, but in fact they came up with a modified wording which nevertheless considered the ground that had been defended until then. It is not true that that has always been the UK position. The United Kingdom told the United Nations originally that as far as they were concerned the Treaty of Utrecht did not constrain our right to self-determination. It is complete rubbish to suggest, as the United Kingdom continues to suggest, that the Treaty of Utrecht constrains our right to self-determination having conceded in this resolution that the issues, in the plural, of sovereignty will be discussed, which was in fact a recognition that the Spanish position that the Treaty of Utrecht gave title up to Casemates but did not give title over the isthmus and that the isthmus was not covered by the Treaty of Utrecht. The British Government accepted that in this resolution and that is why the word "issue" was in the plural and in fact when it was published in Gibraltar they forgot to put the "s" and The Convent came out saying it had been a typing error. The biggest typing error in our history. That distinction of that "s" means that by the British interpretation the people of Laguna and Glacis, who are on the isthmus have got the right to self-determination because they are not covered by a territory that is subject to the Treaty of Utrecht. So, maybe all we need to do is to all move down there and then we can exercise it. Given that that is the kind of rubbish we have been fobbed off for the last 34 years, and I regret to say that the British Government has not defended our rights in the way they have defended throughout those 34 years the rights of the Falkland Islanders and continue today, they continue today to oppose recommendations calling on bilateral negotiations with Argentina, I would have thought that the text of my motion did not

require the Government to accept our reasons for wanting to terminate it. They can have different reasons for wanting to terminate it but we must both want to terminate it and the resolution before the House as a result of the proposed amendment does not say that we want to terminate it. It does not say in this resolution we want the Committee of 24 not to recommend the consensus resolution. Well, what is the use of him going there and saying we do not want you to recommend the continuance of this resolution. His reason is because it is bilateral. Our reasons are because independent of whether it is bilateral or trilateral or multilateral it is in fact based on the resolutions of the UN and it is only possible to interpret that in one way in our view. We may have different reasons for wanting to end it but we both want to end it, supposedly. Then if we want to end it why do we not say that we want to end it? And why do we not say to the United Kingdom "the first step towards ending it is that you start supporting it, at least if we cannot get the rest to stop supporting it, you do not support it", because in fact it would not be possible for the matter to proceed in the Fourth Committee without the support of the United Kingdom because it is a consensus decision taken without a vote precisely because the two Member States of the UN that are involved are both backing it. It would not be a consensus if Spain tried to push it through on its own. This is why until the United Kingdom backed it there was no such consensus. Before 1985 what there was, was a call on them to do it but not to continue with what they were doing already because no agreement had been reached. It seems to us very clearly that to suggest that all that has been done in the United Nations since 1992 is in our view a waste of time because what we are saying to the Government is "look, you are not going to get very far in persuading the United Nations to reject the consensus if you do not reject it in this House and if you do not call on the UK to reject it, how can you go round telling other people to do what you are not prepared to do yourself?". You put your money where your mouth is. Of course, it is quite obvious that they are not prepared to do it. They are prepared to indulge in the rhetoric in front of the cameras for the benefit of others but when it comes to the crunch and we have to make a stand and say to the UK "look, we want you not to go ahead" and then we

will have an opportunity, having had the reaction of the Foreign Affairs Committee and with a unanimous resolution of this House to mount a lobby in the UK to get the United Kingdom to break with that process.

The issue that it is in Brussels is not the issue, Mr Speaker. When it was agreed in Lisbon the issue was the same one. It is an issue which he says he subscribes to sometimes but not always. He has not said it today but when he was asked by the Chairman of the Committee of 24 about talks with Spain he said "the decolonisation of Gibraltar is a matter for the administering power and the colony, not for the third party claimant". The decisions in the United Nations are about involving the third party claimant either in decolonising our country with the administering power or decolonising our country with the administering power and him because I am certainly not going to become a party with the administering power and me. That is for certain. They are not going to do that with me but they are prepared to do it with him because he is prepared to do it with them although he says some times that he is not. If he sticks to the line as he did in the Fourth Committee last year, he told them something completely different. He told them last year that his position was quite separate from the question of our decolonisation and the difficulties that we have arising out of Spain's outdated territorial claim to Gibraltar. The new constitutional arrangements with UK which would not settle the dispute with Spain, so sometimes he argues "we want to decolonise bilaterally with the United Kingdom, but we want to engage Spain in dialogue in order to have good neighbourly relations". He has talked about welcoming the fact that the socialists in Spain are talking about putting sovereignty on hold. The consensus resolution in the United Nations which he supports and he wants to participate in do not put sovereignty on hold. Even when the AACR accepted the Brussels Agreement in 1985 they entered a reservation about not forming part even with a third voice or any other kind of voice on the sovereignty side of the Brussels Agreement. They are not doing that today so not only are we endorsing the resolutions of the United Nations, we are saying that all that we require is that we are given a role in the bilateral decolonisation process which then modifies its bilateral

nature. I am afraid if that is the fact as this Government are committed to, then we are not going to get anywhere very far, either today or in the near future when we try and come to grips with what it is we want the United Kingdom to do because, certainly, the first thing we will want the United Kingdom to do is to stop talking about our future with the Spaniards.

Therefore, Mr Speaker, I really think that it is quite obvious that what this motion has done is, first of all, to show the very great dividing line that there is between the two sides of this House and secondly to show that contrary to the impression that we gained that this year the Government had gone further in wanting to put to one side the consensus resolution it is not the case. We actually, I regret to say, misread the speech of the Chief Minister to the Committee of 24 and assumed that having told the Committee that for two years it had been asking them to amend the thing to give them a third voice and amend the thing to give them the right to self-determination that he was now saying "well, look, this is a waste of time" and he was taking the same line as the Members of Parliament in the Foreign Affairs Committee had taken which is to say the process, which is the process in the motion, should be terminated and should be replaced by something else. As far as we are concerned we support that it should be terminated and then we will discuss what should replace it but we support that it should be terminated. I am happy to say that our position counts with the backing of the Foreign Affairs Committee and therefore since it is not what they want then we have to agree to disagree.

HON CHIEF MINISTER:

Mr Speaker, the Leader of the Opposition is of course free, like any politician, to change his mind and to change his policies. What he is not free to do is to adopt policies now and pretend that his position has never been different in the past. What he cannot do is misrepresent my position to the people of Gibraltar as being constantly changing as being inconsistent, paragraph 3 with paragraph 6, and to describe me as a political chameleon whereas in actual fact the only political chameleon on this issue,

as I will now proceed to demonstrate in detail, whereas in fact the only person who says one thing on one occasion and another thing on another, the only person who says one thing to people here and another thing to the United Nations, the only person who..... I do not know whether a chameleon can do a 180 per cent U-turn, but the only person who has done a 180 U-turn on this issue is him. I suggest that the Hon Mr Perez waits to hear what I am going to say before he giggles.

HON J C PEREZ:

I have known the integrity of my Colleague for 27 years.

HON CHIEF MINISTER:

Well, let us test the hon Member's blind faith in the political integrity of his Leader, shall we? Of course, if the hon Member's position is that he is incapable of being persuaded that his great Leader is capable of doing anything wrong, then of course there is no point in addressing him. I suppose that his position is not quite as unintelligent as that. If the hon Member is provided with incontrovertible evidence of the Leader of the Opposition's extraordinary chameleon-like qualities, then he can of course ignore it and pretend it does not exist. I can understand the Hon Mr Gabay's nervousness on this issue because of course he will also have some questioning to put given that he always says that he is only in politics because he supports the foreign policy position of the Leader of the Opposition, he may be interested in some of the things that I am now going to point out to him and which he obviously has not read.

The Leader of the Opposition who accuses us in press releases of not being able to take criticism is really throwing stones from a glass house. Here I made a perfectly neutral and low key position asking whether the hon Member had considered whether highlighting those particular three lines without any explanation or context might not give an unintended false signal and as the hon Member interprets this as a challenge to what he regards as his macho infallibility on matters of Gibraltar's foreign affairs, he

replied by firing an exocet missile about what I have said in my own speech. If he wants to quote from my own speech, he has to quote without the same degree of dangerous selectivity as was at the root of my very constructive observation about his dangerous selectivity in the section of the resolution that he had chosen to quote from. I was not in my speech to the United Nations reading out three lines of the consensus resolution as he has done because, frankly, none of the lines that he has cited from, is relevant to his objection to this matter. My quotation of the similar words were put into context and I will read the context for him, given that he did not do me the consideration of placing my own words into context. What I told the Committee of 24 is, and I now quote from my speech: "When this special Committee speaks about eradicating colonialism in Gibraltar, is it....." presumably the hon Member understand because if he does not I am confident that the members of the Committee of 24 understand the impact of irony and the impact of rhetorical questions and I suspect that the hon Member does as well but simply does not want to give me the benefit of his understanding. "When this Special Committee speaks about eradicating colonialism in Gibraltar, is it advocating the handing over of my country to Spain against the unanimous wishes of its inhabitants? Or....." Incidentally, apparently the fact that I now refer to "my country" as he used to do which incidentally I have always done, some people interpret to mean that he and I now share a foreign policy..... "when this Special Committee speaks about eradicating colonialism in Gibraltar, is it advocating the handing over of my country to Spain against the unanimous wishes of its inhabitants? Or does it set out to promote the right of the people of my country to self-determination? Does this Committee see its task as recognising and helping us to exercise our right to self-determination or to help Spain recover a territory that she not only lost in 1704 but ceded in perpetuity to the British Crown in 1713. Spain's territorial claim which is being used to obstruct our right to self-determination is the very antithesis of the declaration on the granting of independence to the colonial country and people of Gibraltar which is the sole mandate of this Committee. The position is, in reality, quite simple. As Gibraltar is on this Committee's list of non self-governing territories, its case is within this Committee's mandate

and therefore can be decolonised only by the application of the principle of self-determination in accordance with the declaration. In the opposite case Gibraltar would simply be a disputed territory whose people have no such rights. It would then not be a colonial situation at all falling within the terms of reference of this Committee and would not be on its list.

I say this Mr Chairman because every year and despite our protestations this Committee limits itself to recommending to the Fourth Committee the adoption of a consensus resolution calling upon the United Kingdom and Spain to negotiate to resolve 'the differences between them over Gibraltar' in bilateral discussions between them. With respect, the decolonisation of the non self-governing territory of Gibraltar in accordance with the United Nations Declaration on the granting of independence to colonial countries and people cannot by definition be a matter of bilateral resolution of the differences between the administering power and a third party territorial claimant. That would be relevant in the resolution of a territorial dispute which is very different to the process of decolonisation which preoccupies this Committee and the Fourth Committee. Gibraltar is neither the UK's to give away nor Spain's to re-obtain. The decolonisation of Gibraltar in accordance with the United Nations Declaration can only be a matter of the existence, recognition and exercise of the right of self-determination by the people of the territory. It is a matter between the colonial people and the administering power". That is the context in which there now follows the paragraph in which I cited the words when the Fourth Committee adopts every year with the Special Committee's recommendation the consensus Resolution urging the United Kingdom and Spain "to continue their negotiations with the object of reaching a definitive solution to the problem of Gibraltar in the light of relevant resolutions of the General Assembly and in the spirit and Charter of the United Nations" what is the light to which the resolution is referring? What are the relevant resolutions of the General Assembly and what, in this Committee's view, is the correct interpretation and accusation to our case? What is the spirit of the Charter of the United Nations to which reference is made? Does it mean the

recognition of the denial of the right to self-determination of the people of Gibraltar?

Mr Speaker, I put it that no objective reader or listener of that context could possibly suggest that the effect of those words in that context were somehow to express lack of confidence or doubt or insecurity or uncertainty about what the correct position is and what we were asking. Presumably the hon Member who highly values his quality as a linguist, presumably knows that the fact that he puts a question mark does not necessarily mean that he is asking a question to which he does not know the answer. There is also the style of the rhetorical question and there is also the style of the leading question. Mr Speaker, the hon Member presumably is aware of that.

Mr Speaker, the hon Member says that we cannot agree on this amended resolution because what there exists between both sides of the House is not a gap, it is an unbridgeable gulf. Well, he has really just confirmed what were our fears and suspicions about his real motives for bringing this resolution because the only difference in substance apart from the difference between rejection and asking to change, the only other difference in substance, and I will deal with that in a moment, but the only substantive difference in terms of the rights that we all, presumably he is not refusing to support my amendment because he does not think that Gibraltar should not have a voice in talks and presumably he is not..... my resolution does not speak of Brussels, presumably yours does by implication, mine does not explicitly and that is the difference. The hon Member's resolution was not designed to obtain genuine consensus in this House on matters on which he knows we all agree. The motive of his resolution was to try and corner the Government into collapsing into the Opposition's view on the Brussels Process and the Brussels Declaration which he has been trying to do to me since that fatal day for Gibraltar, as he constantly reminds his more hysterical supporters, that fateful day for Gibraltar when the people of Gibraltar were foolish enough to allow me into this Chamber at all. Since that very day he has been trying by one means or another to seduce, cajole, the Party which I lead into

collapsing into his position on the Brussels Agreement. The Government do not agree with him and it is not usual in democracies for Opposition parties to demand consensus, not around the position of the Government, but around the position of the Opposition. That is neither usual nor possible, nor probable. Therefore, the hon Member has chosen not to support this resolution, not because he does not agree with the philosophy of our amendments but because of the unbridgeable gap and the only unbridgeable gap, as I will now demonstrate to him by what he has had to say in the past about the difference between amending and rejecting the consensus resolution, the only unbridgeable gap between us is on the need to totally reject the Brussels Agreement, because everything else..... not only is there no unbridgeable gap, there is no gap at all. Let us be clear what the unbridgeable gap which we have not been able to close today and which we cannot close on the basis that the hon Member pretends, the unbridgeable gap which is not raised in my amendment is that he does not end up with a text that allows him to hold it up and say "you see, at last, the Government have at last implicitly, by implication, rejected the Brussels Resolution". That is the reality of it, Mr Speaker. What I think we agree to, obviously I do not impute to him agreement that there is not, but what I think we agree to is what is in this resolution. What I have left out of the resolution is what we do not agree to and I have left it out precisely because I know that we do not agree with and I wanted to bring a motion to this House which we could all subscribe to, not a motion for which there was a risk attendant to either side to subscribe to and that is the difference between a genuine desire to achieve a consensus motion and one which is not driven by those considerations.

Mr Speaker, he is absolutely correct when he says the hon Members are not asking the UN to reject their resolution but to change it, absolutely correct. I have never gone to the United Nations to ask them not to pass a resolution. I have gone to the United Nations and asked them not to pass that resolution in those terms and I have pointed out to them what are the terms that I would like them to include in the resolution and, of course, why should I call for a rejection of the UN resolution now when

what I am looking for is not a rejection of any resolution but for a modification of the UN's resolution. Mr Speaker, anyone hearing the hon Member would think that it was some sort of cardinal sin not to go to the United Nations and ask them to reject as oppose to modify their consensus resolution. Not only did he never, on no occasion, ask the United Nations to do that when he was in office, and presumably if he never asked them to do it, it cannot be so terrible that I have not asked them to do it. In fact, what he asked the United Nations to do was the opposite. The hon Member used to go to the United Nations to say to them "I am not asking you to change your resolution". That is very different to what he is arguing today and that is very different to the importance that he is attaching to it today. I know that the hon Member does not like to be reminded of things that he has once said or of policies that he once defended but I have to do so, not because he is not entitled to change his mind. I wish he would, but because in criticising and in trying to bring his opponents' policies into the public opprobrium it is not irrelevant that he used to adopt those positions himself not very long ago and when he went to the United Nations in July 1992, trumpeting the fact that he was the first Chief Minister to do so since the 60s what he said to the United Nations and I quote from the official text of his speech is "Let me say that in saying this I am not asking Mr Chairman that this Committee should, having heard me, adopt a different resolution from the one that has been submitted to it as a consensus by the administering power and the Kingdom of Spain or to amend it in any way. I say this in total honesty to you and I am sure that you will understand that I have no desire to upset either London or Madrid. Each of them outnumber me a thousand to one and I would be very unwise to go out of my way to take on a Goliath of that size". Not only was he not asking the United Nations to reject the Resolution, he did not even want them to change it. What I have just read he told the Committee of 24, but this is what is said to the Fourth Committee who do recommend to the General Assembly the adoption of the consensus resolution, he says to them "Therefore, what is missing in the annual repetition of a resolution which calls on both sides to meet and talk about Gibraltar is that notwithstanding the reference in the text to the commitment of the United Kingdom to respect the

wishes of the people of Gibraltar it failed to recognise the paramountcy of such wishes in the exercise of the right to self-determination.” In other words, what he was saying to the Committee is, what is missing in your resolution and therefore, by implication, what I am asking the Committee to change, is to recognise the paramountcy of the principle of the people’s right to self-determination which is exactly what this resolution before the House today calls for. This was not that long ago, this is nearly half way through his second term of office. As recently as October 1993 he was telling the Fourth Committee that the only thing he wanted changed from the consensus resolution that is so fatefully flawed and dangerous for Gibraltar, the only thing that he wanted amended in it was that they should recognise the paramountcy of the wishes of the people of Gibraltar in the exercise to the right of self-determination. Mr Speaker, the hon Member has obviously changed his mind and as he is accustomed to saying to people who change their minds that they are inconsistent, that they are chameleons, that they have no political principle, that unlike him they have not defended the same philosophies since 1972 when he appeared in this House, he cannot say those things because the Chief Minister in Gibraltar, who has most frequently changed his message, depending on when it suits him, is him, except in the matter of the Brussels Agreement which he has made his political sacred cow and which he expects the Government to help him slaughter.

Mr Speaker, the hon Member must know what the word “applaud” means in a political context. It does not mean that we all break out into spontaneous hand clapping. What it means is that the House applauds..... I am telling him because as he considers himself to be a linguist, he must know the different nuances of meaning of the same word in different contexts. He obviously understands that when I call on the House to note and applaud what he and I have been saying at the United Nations, that that is not an invitation for our 13 Colleagues in this House, and even the ex-officio Members, to stand up and give us a standing ovation but, having said that, his memory cannot be so short that he has forgotten the resolutions that he used to bring to this House when he was the Chief Minister calling on the House

to support the Government, calling on the House to express its support for the Government, calling on the House to adopt the Government position and generally calling on the House to raise him on their collective shoulders. He has been the master of the use of resolutions of this sort, of the sort that says “strike everything off after the words ‘this House’” and then to insert self-congratulatory language. He is the master of it. Indeed, I regard that I have learnt that from him. Perhaps if I had not learnt from him this very useful technique it might never have occurred to me at all. I honestly wish that the Leader of the Opposition would not misrepresent my arguments for the purposes of distorting them. The hon Member said in his reply “I do not know why the Chief Minister says that I suggested that we should not go to the United Nations”. The Chief Minister did not say that the hon Member had suggested that he should not go to the United Nations. If that is what he believes then he has not understood what I tried to explain and therefore I will explain it to him again. What I said was that there was no point in going to the United Nations to ask others to change something which the United Kingdom is itself not willing to change. I said if that is the correct philosophy the hon Member will have to extend it to all other things that we go to the United Nations and ask them to do, including the recognition of our uncurtailed right to self-determination, including his call to the United Nations to reject the Brussels Process. Why did he go to the United Nations to ask them to reject the Brussels Process when he did not need the United Nations to reject the Brussels Process. What he ought to have done, in accordance with what he was recommending to me, was to have gone to London and bashed the door until they did, which I know he did as well but he did not do it instead of going and asking the United Nations to do it which is what he is now asking me to do. He was asking me to not go and ask others not to support the consensus resolution but rather to persuade Britain.....[INTERRUPTION] Yes, Mr Speaker, his words, “we should mount an attack on the United Kingdom” were his words. “What is the point of asking others not to support the resolution, what we should do is go and mount an attack on the United Kingdom and get them not to agree to the consensus.” Mr Speaker, all I am saying and I am not saying any more than this in relation to this point, all I am saying is that it has

never been the criteria either of mine or his that one only goes to the United Nations to address things that it is not in the United Kingdom's power to resolve. We go to the United Nations precisely because the United Kingdom will not adjudicate in our favour on certain matters on which we think we are entitled to their adjudication. It is all very well for the hon Member to now stand up in this House and say "well, I think it is a risk to ask the United Nations to clarify what their doctrine is because we might be giving the Peoples Republic of China the opportunity to reaffirm it."

Amongst one of his better points, and many of the points that I use in my UN speeches are continuation and adoption of arguments that he first developed, Gibraltar's fundamental position at the United Nations does not change because there is a change of Government both of whom believe profoundly in our peoples' right to self-determination, but it was him, amongst the various arguments that he developed, one of them was "please United Nations refer to an international Court of Justice whether the Treaty of Utrecht curtails our right to self-determination because we the people of Gibraltar are entitled to clarity". "There is no point in us banging our heads against a brick wall" to quote his exact words "there is no point in the people of Gibraltar banging their heads against a brick wall demanding a right to which they are not entitled". Mr Speaker, I really cannot conceive a more cataclysmically and a more unambiguously and a more definitively formulated question the answer to which, if it went against us, would be fatal. If the United Nations says "my doctrine is that you should be handed over to Spain", the United Kingdom is not going to agree to it. She has never done so. Therefore, I have run much fewer and smaller risks with the resolution on these issues than he has done. The hon Member says that the resolutions in the UN are about involving the third party claimant in our decolonisation and then as if to satisfy his credentials in that area he says "well, they will not ever achieve it with me, they might with him but never with me if I am Chief Minister". I have to tell him that that is also a U-turn. I have to tell him that that is also an extraordinary volte face, the most monumental political U-turn in the political history of this

community. Again, the hon Members may wish to giggle but I do not know if the giggles are in an attempt to muffle the clarity with which the evidence can be heard by others. It is the only explanation that I can think of for their giggles before they have even heard what I am going to say.

Mr Speaker, let me tell the House what the Leader of the Opposition, who has just made the remark that "the third party claimant has no role in our decolonisation and that they might achieve that with me but not with him". This is what he told the United Nations Seminar for the Eradication of Colonialism in its Trinidad and Tobago Seminar as recently as July 1995, within the last nine months, of his last Government "I said that myself, Mr Chairman, in my first submission to the Committee of 24 in 1992. I am fighting for recognition of the principle to exercise the right to self-determination. Whether I choose to exercise it, when I choose to exercise it and how I choose to exercise it, has to be taken into consideration whether I want to be alive the day after. Therefore we are a realistic people with a powerful neighbour who want to live in harmony and peace and cooperation with them and we would not, I would not, lead my people or recommend to them a way of decolonising that would extinguish us just for the sake of having proved the point that we are able to do it." I do not know what that means unless it means that the hon Member was saying that he is fighting for the recognition of the right to self-determination but that he knew that to exercise it safely so that he continued to live the day after and so that he continued to live in harmony and peace and cooperation with his neighbour the exercise of it would have to be discussed with Spain. What other meaning is this paragraph capable of being given? And, Mr Speaker, if anybody doubts, if anybody hearing this debate doubts that that is what he meant, the hon Member produces a glossy-coloured brochure with him triumphantly standing at the front of the National Day stage against the backdrop of red and white balloons going up into the air, prints hundreds and hundreds of copies which he takes to the United Nations, the place where he goes to assert our right to self-determination, distributes it to every member of the United Nations and what does he say in it? What does he say in it? I quote what he says from it, at paragraph

14 "Gibraltar recognises that the exercise of its right to self-determination may be constrained and may require a process of dialogue....." wait for it "with the United Kingdom and with Spain". Mr Speaker, I do not know if I do not understand the English language, but it seems to me that those words are only capable of meaning one thing, that he distinguishes between the recognition of the right and the exercise, that the recognition is something that he goes to get in the United Nations and that the exercise of it after he has had it recognised is something that he will have to talk to Spain as well about. I do not know what he means when he says "they may be able to involve him....." meaning me "in the decolonisation process but they would never achieve it with me", the great Joe Bossano! That is not what he has told the United Nations repeatedly and when I quoted this language out to him last time in this House he had the audacity to stand up and answer that it was Francis Cantos, then the editor of the Chronicle in 1993, now my Press Officer, who had written this. Did he also write his speech three months before, in July 1993, in which he as part of his speech, not as part of the glossy brochure to hand out, as part of his speech, he, Joe Bossano, the Hon J Bossano, then Chief Minister, said exactly the same thing. Did Mr Cantos then write his speeches? And then I will want to know whether the Leader of the Opposition, then the Chief Minister had his speeches for the United Nations written on his behalf by the Editor of the local daily newspaper because what he said in his speech is indistinguishable. There is a lengthy paragraph about the virtues of local dialogue. I think it might be worth reading this as well for the benefit of his Colleague the Hon J Gabay who so critical is about our policy of local dialogue. I quote "as a Government I can report an important move in developing links with other neighbouring cities in Spain", this is the United Nations, this is not a speech over a lunch in Almoraima. He went to New York to tell the United Nations that his Government were now in a position to report an important move in developing links with other neighbouring cities in Spain. This is the creation of the Economic Coordination Council. "The aims of the Council are to establish and promote economic cooperation and development in Gibraltar and the neighbouring part of Southern Spain to undertake projects for studies for the creation and expansion of economic

activities in the region and to seek funds for financing such projects, studies or activities from international agencies and private investors. The Council now includes all the municipal leaders of the surrounding towns and cities, Algeciras, La Linea, Tarifa, Castellar, San Roque, Los Barrios, Jimena as well as Ceuta", names which I am sure meant an awful lot to people sitting in New York. "Meetings were held in January and May this year in Spain and in Gibraltar when an agreement was signed to promote joint venture activities by Spanish and Gibraltar companies. Another meeting is to be held in September in Ceuta" and then he goes on to say because all that is just about local dialogue, fine, but the very next thing he says and therefore by juxtaposition "where does all this leave us?" he asked in an obviously dangerous..... if he thinks my rhetorical questions are dangerous I cannot think of a more dangerous one than that. "Where does all this leave us? I would not wish to mislead Your Excellencies into thinking the problem of Gibraltar's decolonisation is on the point of being resolved but there are clearly some signs that indicate that meaningful dialogue may be more probable in the future than it has been in the past. Meaningful dialogue about decolonisation and I also have to stress that the people of Gibraltar have to be a primary player in any new initiative and cannot be relegated to a subsidiary or indeed a subservient role". Amongst all these quotations that I have put it is clear from them that the position that Leader of the Opposition defended in the United Nations between 1992 and 1995 was that he did not even ask them to modify, let alone the reject the consensus resolution because he did not want to upset Goliath next to him, Spain. He asked the United Nations to recognise his right to self-determination and he asked for his own voice in dialogue. Those are the very three things that this resolution before the House of Assembly today does and he is now saying that he cannot support it because he is against this approach. If he is against this approach he has to have the courage to explain to the people of Gibraltar that it is entirely the approach that he took to the United Nations over three long years and therefore that he has changed his mind which is fine, but let him not talk about chameleons and political lack of principle and political lack of adherence to policy.

Mr Speaker, I regret that the Leader of the Opposition thinks that he has misread my speech at the United Nations. I do not think he has misread it. I do not think he has read it at all. It is clear from what he has said and from the nuances and from the meaning that he wishes to stigmatise us with, I think he has not read it at all and if he has read it he has not misread it, he has misunderstood it because it is perfectly clear and very difficult to misread but of course even simple language can be misunderstood. Mr Speaker, the Leader of the Opposition cannot say that, as he insinuated, because of course his position here has been that he is not calling for us to support him in the cancellation of the Brussels Process, that he is calling for our support in the rejection of the UN consensus resolution. Then he said "what a terrible pity that we are missing the Foreign Affairs Committee's support for this". The Foreign Affairs Committee did not say anything about the UN resolution. The Foreign Affairs Committee did not say "we think the consensus resolution should be changed". What the Foreign Affairs Committee said was that the procedure and the process established under the Brussels Agreement ought to be changed and went on to say that the approach of the Chief Minister in this respect is eminently sensible, this Chief Minister, when I explained to them in detail what our position was and why we held it on bilateralism in talks.

Mr Speaker, in conclusion, I have to tell Opposition Members that they have two choices given the evidence that I have placed before this House, they have two choices, they either admit to the people of Gibraltar that they have changed their position on these matters and that the policies which they now try to stigmatise on the part of this Government are the policies that they themselves used to hold, that is one option. The other option is that they should all apply for membership of the GSD.

Question put on the amendment.

The House divided.

For the Ayes:

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

For the Noes:

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

Absent from the Chamber: The Hon Dr J J Garcia

HON CHIEF MINISTER:

Mr Speaker, my understanding of the procedure, but of course you are the sole judge of these things, is that as the motion has now been amended it is no longer before this House to debate. There is no longer an original motion before this House to either continue to debate or indeed to vote against.

MR SPEAKER:

What you have voted for is that this amendment be made. The amendment is now made so now you vote on the whole of the motion as amended. It is because of what you said before that the practice here has been that you can amend a motion by just leaving one word which is not the practice in the United Kingdom, but carry on, you have the last word in any case.

HON J J BOSSANO:

Mr Speaker, I will not take up much of the time of the House because I do not believe that there is any point in debating an issue where the positions are very clear. Of course, I think what has been revealed is that the innate genetic suspicion that is part of the character of the Chief Minister means that he assumes some sinister motive behind everything anybody does. Consequently he has come prepared, obviously he does not just read what I said the last time, he has read every word I have ever said and I do not do that with his speeches certainly but he has come prepared with all his material which he has not just produced on the premise that he knew that what he was doing was not going to achieve consensus because it was not acceptable, that we were going to react negatively and that he was then going to have all this stuff, with little notes, so that he could pick and choose bits and pieces of different speeches from different years. Let me say that nobody in Gibraltar has ever suggested that it is better to be at loggerheads with Spain than to be on friendly terms, ever in the entire history of Gibraltar, no party has ever said that. Therefore, to say that I on many occasions have said we want to have friendly relations, we want to have friendly cooperation with our neighbours is nothing new and that is not a U-turn. I say it now and I have said it previously but I can tell the Chief Minister something, he has also said in the same context that we have never changed our position on Brussels and that is also true and this is why he cannot argue both things. He cannot say that we have never changed our position on Brussels and say that I have done a monumental U-turn because in the Seminar I said something which presumably he chooses to interpret as meaning possibly that I was now willing to participate under the Brussels Process. I have never said that in the Seminar, in any leaflet or anywhere else. What I have said and I have said that in many contexts, I have said the people of the Pitcairn Islands have got the right to self-determination recognised. They do not have a hostile neighbour but they have got a population of 55. Their isolation and their size constrains their right to self-determination. As far as we are concerned, in exercising the right of self-determination we may have to weigh

up, as the United Kingdom has suggested that we should the fact that Sr. Matutes will go ballistic and then we take a decision, whether we risk it or we do not. But, of course, it is the willingness to take that step which should be the political debate that we should have in Gibraltar, whether we do it or whether we do not but we are not anywhere near that point because what we have done today is not that I have brought to this House a motion where I call on the GSD to go to the United Nations and do what I have not done, that is to say to go to the United Nations and call for the rejection of Brussels. He said today two things, he said that I have done it and that I have not done it and I will produce Hansard to demonstrate that. When we are talking about being a chameleon, a chameleon changes colour from one leaf to the next and that is what he has done today. In the same speech he has said "I have gone to the United Nations to say we are against Brussels and we want it rejected" and "I have gone to the United Nations not....." yes he has said that today, he has said that I have done that. Having said that he has also said that there is no difference between our policy and his but he does not reject Brussels and that therefore we should all join the GSD. He is not going to get us to join the GSD but at least he has got half of the House to applaud him which is in fact, whether it was linguistically what he wanted or it was not linguistically what he wanted, it was the result that he has achieved - the applause of all his Colleagues, not of ours.

I am sorry that we have taken the decision that we have taken in this House to pass this motion by one side because, of course, passing it by one side of the House does not have the force that a unanimous resolution would have and I regret to say that what we have decided today is to undo what we did in 1991 when we unanimously rejected the Brussels negotiating process. We have just undone that today. I wish he had taken the same position then and that we had that continuation of that consensus but, regrettably, it has not been possible to persuade him, cajole him or do anything else. I still think, since I believe it is best for Gibraltar, that I have an obligation to keep on trying. I do not think he should castigate me for doing this. It is part of my job to try and lobby for the view that I think is better for Gibraltar and which I

thought, honestly, that this year he had moved much closer to. I honestly believed, Mr Speaker, that the line that he had taken before the Fourth Committee was to say "well, look, I have asked you in the past to amend it and you have not given me a positive reaction. I have asked you to recognise self-determination and you have not given me a positive reaction and I am asking you not to support the consensus". Therefore, all that we have said in our original motion and the choice of words was not motivated by anything other than by picking the words that he himself had used, that we have no intention to misrepresent him. I may be critical of the way he puts something in one place and he is entitled to be critical of me in another context when I use some other way but that is not the point. The point is that we had an opportunity today to do two things. One was to reject ourselves the consensus resolution which he has described in much stronger language than I have, negatively. I cannot understand why he does not want to reject something that he has described in such hostile fashion a few weeks ago in the United Nations and, secondly, to put the United Kingdom in the position of saying "we want you to reject it" because if we are saying we want the United Nations not to continue with that consensus resolution, then we should be saying to the United Kingdom that they should be against it. After all, they are one of the 187 Members whom we are asking collectively not to proceed with the consensus.

HON CHIEF MINISTER:

Would the hon Member give way? If that is the hon Member's difficulty in supporting the Government's motion, I believe that the Government would have no difficulty in adding a fifth paragraph to its motion that read "and therefore rejects the text of the Annual Consensus Resolution as it presently stands" or in its current language, or in its current text. If what he wants is to reject the resolution as it is currently drafted, I have no difficulty with that at all. What I do not want to do is to reject it in language that leaves in any doubt what exactly it is that we are rejecting and not rejecting. The reality is that our lists of what we would reject from the resolution would not coincide. They coincide on two or three items and then his would always have one more item on the list

which would be the reference to the Brussels Process of 1984. But if we can do the rejection in language that says "as presently drafted" so that he can accept it, I have no difficulty at all with that, but that is not his resolution, that is making it clear on the basis of our resolution exactly what it is that we are rejecting and why. I accept that he would reject it for a third reason. There are three reasons why the consensus resolution may be rejectable by Gibraltar. One is that it does not give us our own voice and we agree on that. The second is that it does not recognise our right to self-determination. We both agree on that. The third one would be it contains a reference to the Brussels Process on which we do not agree. So let us put it in that language.

HON J J BOSSANO:

Mr Speaker, I know the motion before the House is not the one I gave notice of but with your leave can I remind the Chief Minister that all that the motion said originally was "This House rejects the annual decision adopted by the General Assembly" and it did not say why. So he left it completely open for those who want to reject it, to reject it for whatever reasons they thought pertinent. In fact, we deliberately chose not to make any reference to the Brussels Agreement which he has in fact reintroduced in his amendment. He is the one that by saying we need to quote the thing in full, he has brought the Brussels Agreement into it. We have got our own reasons for doing it and he knows them and he may have different reasons for doing it, that is fine but if all that we have asked is "this House rejects the annual decision adopted by the General Assembly" all that we needed was a full stop and then say "and it further calls on Her Majesty's Government". That is all we needed. The fact is that the motion that has been put, Mr Speaker, is not in fact simply spelling out the reasons for doing it and I think it would be better in any case to reject it without giving any reasons as to why one bit is acceptable and not another. The fact is that this year, for example, the Chief Minister when he spoke to the United Nations has used a new concept which he has condemned in Gibraltar. He has talked about wanting to participate with an open agenda. Participating with an open agenda in dialogue with Spain which I do not seem to remember

him having said before, but it is in this year's speech, unless I have misread that, participating in an open agenda is by definition not participating under Brussels because Brussels does not have and cannot have an open agenda. The agenda is constrained by the nature of the agreement but *[INTERRUPTION]* we do not disagree on that, if we disagree on anything is that he was virulent about open agenda and he accused the Liberals when they first came out with this business of an open agenda, of wanting to negotiate sovereignty with Spain because that is what an open agenda meant and he said in a Government Press Release that in fact it was not him who wanted to talk about sovereignty with Spain but those who were in favour of an open agenda. I have not made any reference to this in my previous contribution because as far as I am concerned the only pertinent fact about the open agenda is that an open agenda for us means moving away from Brussels. Let us just take that as an example. If we were to be in agreement that what we want is to have an open agenda, what difference does it make whether he does not think that that means rejecting Brussels and I think it is rejecting Brussels, if we both agree on the open agenda business. The fact is that he did not agree with it in the past and he has mentioned it this time. I can tell the House that when I brought this motion I honestly believed that the message that was being conveyed on behalf of Gibraltar by the present administration was much, much closer to telling them "we want you to stop this consensus resolution that calls for the bilateral negotiating process to continue, we want that stopped, we do not want you to recommend it, this is sterile and it is a waste of time and it is counter productive". If that is exactly right then as far as we were concerned, the only thing we were asking the House to do, to reject the annual decision which we are asking other people to do and to ask the United Kingdom to do likewise. If that is still a possibility then I think it is not a question of making further amendments but certainly, in the light of the latest remarks, we will now go back and look at bringing another motion to the House where we avoid the pitfalls of risks to the GSD vote-catching potential that he might think is behind this motion. I hope that the next time we can agree on it.

Question put on the motion, as amended.

The House divided.

For the Ayes:	The Hon K Azopardi The Hon Lt-Col E M Britto The Hon P R Caruana The Hon H Corby The Hon J J Holliday The Hon Dr B A Linares The Hon P C Montegriffo The Hon J J Netto The Hon R R Rhoda The Hon T J Bristow
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For the Noes:	The Hon J L Baldachino The Hon J J Bossano The Hon J J Gabay The Hon A Isola The Hon Miss M I Montegriffo The Hon J C Perez
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Absent from the Chamber: The Hon Dr J J Garcia

The motion, as amended, was accordingly carried.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House sine die.

Question put. Agreed to.

The adjournment of the House was taken at 12.42pm on Friday 9th July, 1999.

GIBRALTAR

HOUSE OF ASSEMBLY



HANSARD

21ST SEPTEMBER, 1999

(24th September, 8th, 11th and 15th October,
18th and 26th November)

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Fifteenth Meeting of the First Session of the Eighth House of Assembly held in the House of Assembly Chamber on Tuesday 21st September, 1999, at 10.00 am.

PRESENT:

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

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 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 J C Perez
The Hon Dr J J Garcia

ABSENT:

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

IN ATTENDANCE:

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

PRAYER

Mr Speaker recited the prayer.

CONFIRMATION OF MINUTES

The Minutes of the Meeting held on the 19th May 1999, having been circulated to all hon Members, were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

The Hon the Minister for Education, Training Culture and Youth laid on the Table the Department of Education and Training – Biennial Report.

Ordered to lie.

The Hon the Chief Minister (in the absence of the Hon the Minister for Tourism and Transport) laid on the Table the Hotel Occupancy Survey – 1998.

Ordered to lie.

The Hon the Minister for the Environment and Health laid on the Table the Report and audited accounts of the Gibraltar Heritage Trust for the years ended 31st March 1998 and 31st March 1999.

Ordered to lie.

The Hon the Attorney-General laid on the Table the Revision of the Laws (Supplement No. 7) Order, 1999.

Ordered to lie.

The Hon the Financial and development Secretary laid on the Table the following documents:

(1) The Report and Audited Accounts of the Gibraltar Broadcasting Corporation for the year ended 31st March 1997.

(2) Statements of Consolidated Fund Reallocations approved by the Financial and Development Secretary (Nos. 14 and 15 of 1998/99).

(3) Statements of Improvement and Development Fund Reallocations approved by the Financial and Development Secretary (No. 5 of 1998/99 and No. 1 of 1999/2000).

Ordered to lie.

ANSWERS TO QUESTIONS

The House recessed at 12.55 pm.

The House resumed at 2.33 pm.

Answers to Questions continued.

The House recessed at 5.05 pm.

The House resumed at 5.25 pm.

Answers to Questions continued.

The House recessed at 7.14 pm.

The House resumed at 7.30 pm.

Answers to Questions continued.

The House recessed at 8.10 pm.

The House resumed at 8.30 pm.

Answers to Questions continued.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Friday 24th September 1999, at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 10.33 pm on Monday 21st September 1999.

FRIDAY 24TH SEPTEMBER 1999

The House resumed at 10.05 am.

PRESENT:

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

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 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 J J Gabay
The Hon J C Perez
The Hon Dr J J Garcia

ABSENT:

The Hon Lt-Col E M Britto OBE, ED – Minister for Government
Services and Sport
The Hon A J Isola

IN ATTENDANCE:

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

DOCUMENTS LAID

The Hon the Attorney-General moved under standing Order 7(3)
to suspend Standing Order 7(1) in order to proceed with the
laying of a document on the Table.

Question put. Agreed to.

The Hon the Attorney-General laid on the Table the Revision of
the Laws (Supplement No. 8) Order 1999.

Ordered to lie.

Answers to Questions continued.

The House recessed at 12.15 pm.

The House resumed at 2.35 pm.

Answers to Questions continued.

The House recessed at 4.55 pm.

The House resumed at 5.15 pm.

Answers to Questions continued.

The House recessed at 7.35 pm.

The House resumed at 7.40 pm.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House
to Friday 8th October 1999, at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 10.06 pm on Friday
24th September 1999.

FRIDAY 8TH OCTOBER 1999

The House resumed at 10.05 am.

PRESENT:

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

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 J C Perez
The Hon Dr J J Garcia

IN ATTENDANCE:

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

DOCUMENTS LAID

The Hon the Chief Minister 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 Chief Minister laid on the Table the following accounts:

- (1) GRP Investments Company Limited for the years ended 31st December 1997 and 31st December 1998.
- (2) Gibraltar Co-ownership Company Limited (formerly Westside One Co-ownership Company Limited) for the years ended 31st December 1997 and 31st December 1998.
- (3) Westside Two Co-ownership Company Limited for the years ended 31st December 1997 and 31st December 1998.
- (4) Brympton Co-ownership Company Limited for the years ended 31st December 1997 and 31st December 1998.
- (5) Gibraltar Investment (Holdings) Limited for the years ended 31st December 1997 and 31st December 1998.
- (6) Gibraltar Commercial Property Company Limited for the years ended 31st December 1997 and 31st December 1998.

Ordered to lie.

The Hon the Attorney-General laid on the Table the Revision of the Laws (Supplement No.9) Order 1999.

Ordered to lie.

ANSWERS TO QUESTIONS continued.

MOTIONS

HON CHIEF MINISTER:

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

“That this House approves by resolution the making of the Federal Republic of Yugoslavia (Freezing of Funds and Prohibition on Investments) Regulations 1999”.

Mr Speaker, these Regulations have already been published in the Gazette of Thursday 30th September 1999, under sections 4.1 and 4.3 of the European Communities Ordinance. This is another, in effect sanction regulation made by the European Community against the Federal Republic of Yugoslavia. The hon Members will be aware from the last time we debated a similar motion that these Regulations apply automatically to the territory of the European Community and we are not today transposing the Regulations in the laws of Gibraltar. The Regulations came into effect on the 15th June 1999 in the whole territory of the Community. What we are doing today is, in effect, creating sanctions for non-compliance with those Regulations. The original regulation by the Community was based on Article 60 of the European Community Treaty and Article 301 of that same Treaty which provides for the Council to take, “the necessary urgent measures to reduce in part or completely economic relations with one or more third countries and on the movement of capital and on payments”. The Regulation replaces and extends two previous EC Regulations imposing sanctions on the Federal Republic of Yugoslavia and Serbia, and those are Council Regulations Nos.1295 of 1998 and 1607 of 1998.

Mr Speaker, the new Regulations that we have published in Gibraltar or rather that we are by our local Regulations giving teeth to, in a way that I will explain in a moment, record that it was adopted in view of what is called the continued violation by the Federal Republic of Yugoslavia and Serbian Governments of the

relevant United Nations Security Council Resolutions and of the pursuance of extreme and criminally irresponsible policies including repression against citizens which constitutes serious violations of human rights and international humanitarian law and is designed to significantly increase the pressure on those Governments. Mr Speaker, by Article 15 of the EC Regulation, it came into force on the day of its publication in the official journal which actually occurred on the 19th June 1999, even though it itself was dated the 15th June. It is as I have said a binding in its entirety and directly applicable in all Member States. By Article 12, each Member State is required to determine the sanctions to be imposed whether provisions of the EC Regulations are infringed and therefore the above resolutions, that is to say the resolution, the subject matter of my motion, provides for such sanctions in the form of criminal penalties and they also make other provision to give practical effect to the European Community Regulation notably in relation to the obtaining of information for the purposes of enforcement. I commend the motion to the House.

Question proposed.

HON J J BOSSANO:

Mr Speaker, when the motion relating to sanctions against Yugoslavia was brought to the last meeting of the House dealing with another aspect and dealing with another EC Regulation which was, I think 900 of 1999 we voted against. And although I said that this did not suggest support for Serbia in the dispute in that part of the world it did not stop the Chief Minister from trying to make out that we were showing less than the necessary level of solidarity with those affected. The issue from my point of view in this House is not the rights or wrongs of the actions the Community takes to punish those people who are involved in the genocide in Serbia against the people of Kosovo but what it is that we are doing in the House in approving in a motion the use of powers in the European Communities Ordinance 1972 which has not been used before to give effect to any Regulation of the EC since 1972. This is the second time it happens and the first time it

happened was the last one. In questions in the earlier part of this session I raised why it was that we were doing some and not others and the answer was simply because the Foreign Office had told us to do some and not others. The Government did not seem to know why we were not doing others.

HON CHIEF MINISTER:

No, the Government did not accept that there were others, Mr Speaker, if I could interrupt him. The hon Member makes statements on the other side of the House. He accepts them. We do not necessarily accept them but certainly our source of information for inter-Governmental agreements of this source is the British Government. If the British Government do not bring them to our attention that is how we discover them.

HON J J BOSSANO:

Well, Mr Speaker, with due respect having told us so many times that inter-Government agreements are one thing and Regulations are another, he now describes these are inter-Government agreements and these are not inter-Government agreements. They are not inter-Government agreements and if he does not take my word for it then he ought to read the Council Regulation shown in schedule 2 gazetted by him on the 30th September, which says that what we are doing is giving effect to Council Regulation 1294/99 which repeals Regulation 1294/98 and Regulation 1607/98 which we have not given effect to. He may say that he has only got my word for it and that I make a statement based on nothing and then I assert it as it were a fact. Well, I am now asserting that there was Regulation EC 1295/98 about which we did nothing, which is being repealed and replaced with something about which we are doing something. How come we are required to do something about the replacement Regulation and we did not have to do it about the Regulation being replaced? And the answer is the Government do not know. Well if we are being asked to vote on something and we investigate the details of what it is we are being asked to vote and we are not able to be given an explanation then I think we cannot

support it unless we get an explanation for something that is very unusual. Irrespective of the content, it is not something that is well established and has been going on for a very long time. There appears to have been all these Regulations up to 1998 which were totally ignored by us in Gibraltar and then in 1999 for the first time in May and for the second time now we are bringing in Regulations made by the Governor under the powers of the Ordinance which require that we in this House should approve the Regulation that has been made by the Governor. Well, we want to know why we are doing this now and we have not done it before and also, Mr Speaker, I asked in the earlier part of this meeting of this House, whether in respect of the previous I had a question on the Order Paper which referred to the previous motion giving effect to the one on the sale of petroleum products which was 900/1999 in which authority for the investigation and the implementation of the requirements of those Regulations was the Collector of Customs. I also pointed out that there was a requirement in the Regulation for the competent authority that has to communicate what is going on with other competent authorities to be published in an EEC document and that in fact that EEC document stated that the competent authority for the United Kingdom was the Department of Trade and Industry. It seems to me that what we are doing is, we are saying here in Gibraltar, in our laws, we have got the Collector of Customs as the competent authority to carry out obligations under Regulation 900 of 1999 and the EEC says that the competent authority is not the Collector of Customs but the Department of Trade and Industry, then what is the validity. Mr Speaker is probably better qualified than I am, in view of his previous career, to judge whether in fact the Collector of Customs has got the authority he claims to have under our Regulations if in fact the EEC does not recognise it as a competent authority, I think in answer to supplementaries the Government said that the Chief Secretary had in fact written on the question of the recognition of the Collector of Customs. Well, I have been able to obtain a copy of the relevant document, it is Commission Regulation 1085 of 26th May 1999. This Regulation lists the names and authorities of competent authorities referred in Article 2 of EEC Regulation 900/1999. This was done before we passed the motion in the House in which we endorsed the

Collector of Customs as the Competent Authority, even though he had not been listed in May. I do not know whether that was because in May the EEC had not yet been notified and since May they have been notified and the thing is going to be amended. Notwithstanding the fact that the Spanish Government feels as strongly as we all do in this House about the atrocities in Kosovo, I have no doubt that they will object to our competent authority whether it is about Kosovo or about anything else. It does raise, I think, some questions of principle as to the validity of the instruments. Frankly, Mr Speaker, I have not had the time, given the very recent notification that this was going to be on the Agenda, to try and research whether in fact we have got competent authorities which are supposed to be recognised by other people and which may or may not be. We cannot support the motion on the basis of the amount of information that is currently available to us and I would really urge the Government to go back and take a very close look at this unless we just say "look, we are just doing this to go through the motions, pretend we are doing something and it does not really matter whether it works or it does not work". If that is the case, frankly I do not think that is a very good thing for the House to be doing or for the seriousness with which the legislative power of the House is taken. We are endorsing a decision by the Governor. We endorse that decision in respect of the previous one. I have serious doubts in my own mind as to whether the Governor has got the proper authority to give effect under the powers of the 1972 Ordinance to a regulation in Gibraltar which creates a competent authority which, according to the 26th May Regulation by the Commission, there is no such competent authority. The competent authority in the case of the Member State United Kingdom is the Export Policy Unit of the Department of Trade and Industry, King's Gate House. The answer that I got in the question when I asked who is the competent authority in respect of the regulations in Gibraltar giving effect to the provisions of Regulation 900 of 1999 cannot be the Collector of Customs. At least it cannot be the Collector of Customs for anybody in Europe other than us here in Gibraltar. To have competent authorities that nobody recognises except us, in my view, is a nonsense and a waste of time.

HON CHIEF MINISTER:

Mr Speaker, none of what the hon Member has said during the last 25 minutes relates to the Motion before the House. It relates to the motion that we debated at the last meeting of the House and he has drawn on that as well. The other motion that we discussed when we introduced the petroleum sanctions motion did not purport to list the competent authorities. It said, "that the competent authorities shall be notified". On what basis he feels free to make statements..... [*HON J J BOSSANO: I have not made a statement.*] He has made factual statements to the effect that it is a nonsense for this House to bestow competence on the Collector of Customs which he has not got and no one recognises that he has. That is complete and utter nonsense, Mr Speaker, because the regulation leaves to us the decision of who is to be the competent authority. We have, in this House, nominated the Collector of Customs and all that remains to be done is for that nomination to be communicated. Neither the Spaniards nor anybody else decide in that and we are still not discussing the motion before us. This was in the motion that we discussed two months ago, whenever it was. All this about appointing people with competence that he has not got and this being a nonsense is all complete nonsensical, Alice in Wonderland fabrications of the hon Member who obviously feels he has a need to stand up and sound intelligent without regard to the basis in fact of what he is saying. Those Regulations that we approved the last time do not say who should be the competent authority. It simply says that there shall be competent authorities allowing open the possibility that a Member State may have more than one competent authority and that we have done that. I still cannot answer his question. I could have checked before whether or not we have actually now notified the Collector of Customs but I can certainly remind him of my answer at the time, which was that I had certainly issued the necessary instructions for that notification to take place. But any statements that he makes, apart from being irrelevant in the context of the motion before the House today, which is about something else, but even about that motion since he is interested in revisiting and reopening that historical debate between us, even on that respect he glibly and quite comfortably

misrepresents the content and the provisions of that regulation. Just as he says here now, turning to the motion before us, just as he says "here we are endorsing the decision by the Governor and we in the House should not just blindly endorse the decision...." Mr Speaker, has he forgotten that in the case of defined domestic matters, which he and I both defend, extends to European matters which relate to defined domestic matters, that the Governor means Government. All that the Governor has done in this case is dutifully signed the bits of paper that the Government have sent to him and that is all. Is not that what used to happen when he was Chief Minister? I would be very surprised if he was actually the neo-colonialist who now goes to the United Nations to tell all the countries that I am, because the chap who sounds like a neo-colonialist is him, not me. In his last 15 minutes in this House it sounds like something that a councillor in St Helena might have said. These are not.....

HON J J BOSSANO:

Mr Speaker, is the Chief Minister not required under the rules of this House, in his right of reply, not to introduce new matters which have not been raised in the debate. He has questioned the right to refer to a motion dealing with an identical element in respect of what we did in May. In his right of reply he chooses to talk about St Helena and the United Nations. I am quite happy to have a debate on that but I am not allowed to speak any more.

HON CHIEF MINISTER:

As always, the position of the hon Member is that he wants to say whatever he likes whether it is relevant or not, whether it is inside this House or outside this House and then he wants to guide me and when I reply I am being irrelevant and aggressive. Let me tell the House what the trouble with the hon Member is. That he has grown used for too many years never to be challenged with the nonsense that he used to say publicly and now that he is constantly challenged for the nonsense that he says publicly he does not like it. The question is not whether he likes it, the question is that he is going to get it in measure that he says things

which require an answer. All I am doing is answering the points that he has raised. Mr Speaker, he raised the question of whether we were dutifully just rubber-stamping the decision of the Governor. This is all that I am responding to and if he wants to know how legislatures in the other colonies have dutifully endorsed the decisions of the Governor. Let me tell him how the other British Colonies have dealt with this matter.

The other British Colonies had these regulations extended to them by Order in Council, by a legislative Act of the United Kingdom, not even by their local legislature. In those measures the requesting authority, which is what is relevant for these particular regulations, was the Governor. Mr Speaker, here the Government that the hon Member is rightly concerned should not simply rubber stamp the decisions of the Governor, has first of all considered these regulations, made the assessment that we want to do it ourselves and not have it done for us by the UK in Order in Council, also made a decision that unlike all the other Dependent Territories we do not want the Governor to be the chap who exercises these powers but our own competent authority, we have therefore put "Chief Secretary" instead of "Governor" and His Excellency the Governor has signed on the dotted line. How, in those circumstances, the hon Member can try to paint a picture of the reverse which is that the Governor is exercising the power and we are dutifully signing on the dotted line when it is evident on the face of this document that the reverse is the case, is inexplicable. It is absolutely inexplicable that the hon Member in those circumstances should feel it honest and appropriate to try and paint that picture of the facts. Mr Speaker, the hon Member must know that even under the Health Ordinance, regulations are made by the Governor in the sense that he signs them but this does not mean that the Governor is making the decisions. He may not wish to support the Motion but he should know that in not supporting the Motion he should not do it because he thinks he is just rubber-stamping the decision of the Governor. In not doing it, what he is not endorsing is the decision of the Government of Gibraltar represented by the Members on this side of the House.

Mr Speaker, the hon Member repeats this business about ignoring..... "why are we doing this when we ignored the two in 1998?" Mr Speaker, even if he was right, even if through oversight or because the British Government omitted to tell us about it, or because they told us about it and we overlooked dealing with it, which is not the case, but for whatever reason it did not happen, why does the hon Member feel that he is right in voting against? He must be the only Parliamentarian in Western Europe that has voted against sanctions against Serbia. I know the hon Member likes to have the distinction of being contrarious and he makes the conscious decision to vote against a European Union wide sanction against the reprehensible regime of Serbia because he says "why should I do it today, if I did not do it last year?" What is the logical link? The fact that we did not do it last year, for whatever may be the reason, hardly justifies his decision not to do it now.

Mr Speaker, let us go to the substance of the point, I have already said to the hon Member when he said "we have ignored the others, why are we then doing these?" I have already said to the hon Member that one cannot ignore these Regulations. We are not today giving effect to these Regulations. These are Regulations of the European Community. He knows that the difference between Regulations of the European Community and Directives of the European Community is that whereas in the case of Directives of the European Community they do not become effective in the territory of the countries of the Community until each Parliament has transposed them into the law, for example, a directive does not become law in Gibraltar until we convert it into an Ordinance in this House. He knows that Regulations are different and that Regulations have the immediate application in the whole territory of the Community without the need for the Parliament of any of the territories in the Community or any of the countries of the Community to give effect to them. Gibraltar has not ignored the two 1998 Resolutions, because Gibraltar does not have the opportunity to ignore them because from the very moment that they were promulgated by the Commission in 1998 and published in the Official Journal, they became the law of Gibraltar as they became the law of Denmark, and the law of

Germany, and the law of France and the law of the United Kingdom. Therefore, they were not ignored. In this case these Regulations say "whereas these are the provisions of the Regulations and they have effect, each of you...." territories of the Community ".....nevertheless can decide your own sanctions". All that we are doing here is not introducing the sanctions Regulations. We are not today making it the law of Gibraltar that one cannot do business with President Milosevic, that is already law, that was law the moment the Community promulgated the Regulation. What we are doing today is applying the penalties that people will suffer if they breach those Regulations. That is all that we are doing. The hon Member says that he is content. The effect of his voting against this Resolution is that the hon Member is content for it to be the law of the land, that these sanctions apply, without there being any penalty, any sanction, for breaching them. That is all he is doing by voting against it. He is not voting against the application of the sanctions because they apply automatically whether he likes it or whether I like it or not. All he is doing is having in the laws of Gibraltar a set of sanctions which are already the law of Gibraltar against the Federal Republic of Yugoslavia and Serbia but without any penalty for breaching them. I would urge the hon Member to consider giving all else that I have said, whether he regards that as a logical position. I cannot tell the hon Member, without looking at the two 1998 sets of Regulations, whether they required us to do what we are doing today. He may have looked at them. I have not. It may be, and I say it in no more than in that speculative sense, that the two 1998 European Council Regulations did not allow each country to have their own sanctions regime, did not require each country to do anything beyond what the Regulations themselves were already doing on that date and it may be for that reason that we were not called upon by anybody to take the additional steps that we are doing today which, I repeat, are limited to constituting the criminal offences for their breach and imposing penalties in our local criminal law for breaches of these penalties and, thirdly, what this Regulation does is specify the mechanism for collecting information for the enforcement of any breaches of those sanctions. Therefore, Mr Speaker, I would urge the hon Member. first of all that if he was basing his opposition on any idea that we

were just glibly endorsing in a senseless way or in an unknowing way the decisions of the Governor, that that is not the case. Secondly, bearing in mind what these Regulations purport to do which is simply to give teeth to something which is already the law of Gibraltar and, thirdly, that even if he is right and I cannot say that he is because I am not familiar with the details of the 1998 Regulations, but even if he was right that Gibraltar overlooked for one reason or another doing today in respect of these Regulations what we should have done in 1998 in respect of those Regulations, that that is not in itself a reason to withhold his support from these Regulations.

Question put. The House divided.

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

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

Absent from the Chamber: The Hon Dr B A Linares
 The Hon R R Rhoda

The motion was carried.

HON P C MONTEGRIFFO:

Mr Speaker, I beg to move the motion in my name which reads:

“That this House approves the making of the following rules:

- a. Qualifying Individuals (Amendment No.2) Rules 1999;
- b. Income Tax (Qualifying Companies) (Allowances) (Amendment No.2) Rules 1999; and
- c. Qualifying (Category 3) Individuals (Amendment No.2) Rules 1999.”

The purpose of these rules and the reason for tabling them is set out quite simply in the Explanatory Memorandum attached to each of the rules that the hon Members will have seen. Essentially, these rules revoke previous rules made in the same area which had not been tabled for resolution by this House. The reason for that is really quite simple. The view was then taken, we think erroneously, that section 98 of the Income Tax Ordinance which requires that rules under Section 41 should be approved by this House, the view was then taken that that did not cover rules made under section 41(a) which is the section under which these three sets of rules are made. That view, having been in the Government's view, incorrect, what these Regulations do is revoke those previous regulations and seek to introduce them again with the Resolution of this House.

Mr Speaker, the laying of these rules for the House's resolution prior to their publication is part of a wider tidying up process which we have been embarked upon in relation to the whole question of the transfer of these different responsibilities from the Financial and Development Secretary to the Finance Centre Director. Hon Members may have noticed a publication in Gazette No.129 of 1999 giving notice of the revocation of the previous rules which had commencement dates and giving notice that they all now will be commenced on the 1st November. That actually will help the physical process of the transition in view of the fact that it has only

been during the last week that the move of the staff that undertook this work from the FDS's office has taken place to the DTI. As things stand today what we hope to achieve by both the motion brought to the House today and by the notice that has been published is the approval of this House to those three measures that I have outlined and a commencement of the entirety of the rules on 1st November this year. I commend the motion to the House.

Question proposed.

HON A ISOLA:

Mr Speaker, in the short time that we have had to review these rules we have not really been able to review the position as a result of the confusion that we have stemming back some time now with motions on similar matters. I heard the Minister say "tidying up" and I think that is probably the right words to use. We have gone back to the previous motions. We understand the reasons for the Minister bringing this resolution and the support of the House as a result of the Gazette being of no effect and now revoking these rules but we are still really not quite sure exactly where we are in respect of the three or four different categories, the Income Tax Qualifying Companies, the Allowances, and all the different rules that stem from those. We understand that the effective date for the transfer of responsibility to the Finance Centre Director or the Ministry of Trade and Industry is the 1st November. We have some confusion particularly in respect of Category 2 which is not the subject of the motion but I will mention it anyway in that the Category 2 or the old HINWI rules were brought into effect by notice in the Gazette with effect from 19th August and those rules already bring in the responsibility of the Finance Centre Director even though we understand that that is not yet in place. We are still a little bit confused as to exactly the process of the implementation of the rules and indeed how they have been brought into effect. Frankly, with the motions being brought in, taken back, the notice of motion in June which dealt with the Category 2, Category 4 and Qualifying Companies (Amendment) Rules, that corrected the previous mistake of

having Gazetted them and then brought them back again to the House in the motion and here, notwithstanding that that was corrected, we seem to be doing the same thing again in correcting the same mistake again in respect of a different rule. I think that is right in respect of what is happening. The Qualifying Category 3 was Gazetted on 15th July and the other two were Gazetted on the 9th September. I can only assume that once these rules have been passed through this House they will yet again be Gazetted and I think that has left the industry in some confusion as to what exactly is happening in respect of these rules and indeed the transfer of responsibilities. I know that a circular has been sent to the practitioners advising the application to be processed by the DTI but that the actual official transfer of the function will not take place till the 1st November.

HON P C MONTEGRIFFO:

Mr Speaker, I accept that there has been some confusion in this area and that that position is one we have sought to rectify. We are actually sending the notice out to the industry as the hon Member has indicated. I do not want to go into the reasons for the confusion, which are of a drafting nature rather than of anything else. What we are doing today in the House is doing nothing more than giving the House's approval to the regulations that were purportedly published already with effect. It is not as though it is a new measure. It is not as though it is something not all which the Government are proposing and the House should consider. It is something that the Government have given notice of already. It is just that we are correcting what appears to have been a defect in the way the rules were previously published. I do not think there should be any confusion now. The position very simply is as I indicated when presenting the motion, it is that all the rules will now come into effect on the 1st November. That is what we have told the industry in our circular. The office has physically transferred to DTI as from last week and therefore the applications are being processed physically through the DTI. In the interim period between now and the 1st November the Financial and Development Secretary remains the statutory authority. On 1st November the actual transfer will take place and

in fact there have been no cases, that we are aware of, of any difficulty arising in practice. The two areas that might have been of concern, namely Category 2, which are the new HINWI's, are being processed on the basis of the old rules. Indeed, since the applications take some time to process people wanted to access the new rules, they can wait until 1st November to access those new provisions. With regard to Category 4, hon Members will recall is the new REP status, we have not had any applications for those yet although we are in discussion with a number of parties.

HON A ISOLA:

Would the Minister give way? Mr Speaker, I do not think in fact that what the Minister is saying is correct certainly in respect of the Category 2, the reason being that the old rules have been revoked and the only aspect of the old rules that remains in force is the transitional provisions, people that want to stay there can stay there but in respect of Category 2 those rules were implemented in August of this year with the Finance Centre Director and obviously we have been told that that official handover will be on the 1st November but certainly in respect of those rules I appreciate what he said but what the Minister cannot say is that in fact the old rules continue to apply because they have been revoked. The actual Bill that we passed did revoke the HINWI rules and the commencement date which is the commencement date for the Category 2 Rules have the effect of stopping the previous rules, certainly. If they had not been revoked people today have the choice of applying to be a HINWI or applying to be Category 2, that is not the case. The new rules brought in the new status of Category 2 individual. One can no longer apply for HINWI. Therefore they have been revoked and that was the effect of the law that we passed, he specifically said so, except in so far that people who had the certificate of HINWI could keep them.

HON P C MONTEGRIFFO:

Mr Speaker, I dare not give on my feet and without looking at the provisions in detail, a categorical answer to that point but I would

be very surprised if the hon Member was right because by revoking the Category 2 rules the purported revocation of the old rules would also fall away. Therefore, one would have in place a situation where people could continue to apply under the old rules. But in any event the point I was making really was much more a practical one which is that we have actually had no applications in the intervening period of people seeking to access the new HINWI rules. Therefore, we have not had a problem of serious applications that have been prejudiced or delayed as a result of this confusion of commencement dates. We have taken the 1st November..... we could have decided for example to have taken the 15th October, we have taken the 1st November as a convenient start up date for everything because we do not have a practical problem with pending applications that are being delayed or whatever and because we thought it sensible bearing in mind that the staff has moved in only recently to give dust time to settle, so to speak, before D-Day on 1st November when the actual transfer of all responsibilities takes place. There is not a practical problem as far as I am aware. I am not aware that there is even a legal technical problem of the type the hon Member is suggesting but even if there was and we shall certainly look at that, it is not as though anybody has been prejudiced or affected by it.

MR SPEAKER:

I am allowing the giving way which is really to clear up something you said before and it has been misunderstood.

HON A ISOLA:

I am just trying to clarify something that has been said. Certainly the Category 2 Rules, section 13 subject to rule 14 the Qualifying High Net Worth Individual Rules 1992, are revoked?

HON P C MONTEGRIFFO:

Yes, but we are revoking that notice. This is the whole point. If we revoke the whole notice we revoke the revocation of the earlier rules.

HON A ISOLA:

These were approved in June not today. They have never been revoked. They were passed by notice of motion on 26th June. The notice of motion approving these rules came in June 1999. The effective date has been gazetted and these have been brought into force in August 1999. The rules have been revoked under the Category 2 Rules so the previous ones have been revoked, it has been through the House in a notice of motion in June 1999 and the Gazette bringing these rules into effect came out in August. What I am merely trying to say is that the Minister in his reply said that the previous rules carry on. I am saying that they do not because the previous rules have been revoked and today the responsibility lies with the Finance Centre Director notwithstanding the fact that I am told that it is the 1st November. There have been no applications so it may simply be a point of no prejudice to anybody but from a legal stand point certainly the rules are in force and the previous ones had been revoked subject to the transition of provisions.

HON P C MONTEGRIFFO:

Mr Speaker, I beg to differ. What we have done by revoking the commencement date of the various rules in question pursuant to Legal Notice 129 has the effect of not bringing those rules into effect and thereby not making the repeal of the earlier rules effective. The earlier rules go on living, so to speak, until the commencement is re-ignited and therefore we have a situation where there is no gap that has occurred, certainly no gap at present, no gap post the revocation of the commencement notices.

Question put. The House voted

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

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

Abstained:

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

Absent from the Chamber: The Hon Dr B A Linares
 The Hon R R Rhoda

The motion was carried.

The House recessed at 12.45pm

The House resumed at 3.40pm.

BILLS

FIRST AND SECOND READINGS

HON CHIEF MINISTER:

Mr Speaker, with your leave we would like to proceed first with the Bills standing in the name of the Minister for Trade and Industry and within those to take the Companies (Accounts) Ordinance first rather than the (Consolidated Accounts) Bill.

THE COMPANIES (ACCOUNTS) ORDINANCE 1999

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 78/660/EEC as amended by Council Directives 83/349/EEC, 90/604/EEC, European Parliament and Council Directive 94/8/EC and Council Directive 99/60/EEC on the annual accounts of Companies, be read a first time.

Question put. Agreed to.

SECOND READING

HON P C MONTEGRIFFO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, as hon Members will know this Ordinance seeks to transpose the well known and perhaps infamous Fourth Company Law Directive. Hon Members will know that the directive requires the publication of company accounts, that is, company accounts in relation to any company that is limited by shares or by guarantee. The directive was adopted in 1978 and has therefore been outstanding for some considerable time.

Mr Speaker, the subject of this directive has been a matter of great consultation between the Government and industry. There has been historically concerning the industry about transposition but the Government and industry have formed a view that transposition is desirable for two main reasons. Firstly, it is a legally binding EU commitment and as the House knows the UK is facing infraction proceedings in respect of these directives. Secondly, we have sought and have taken full advantage of all the derogations permitted by the directive especially those that apply to small and medium companies. In particular a small company, not trading in Gibraltar, would only have to produce an abridged balance sheet and not to produce any audited accounts, such small companies would not have to produce any profit and

loss account or a Director's report. Schedule 1 to the Ordinance sets out the definitions of both small and medium sized companies and it is probably useful that I should highlight what a small company is defined as so that hon Members can see the extent to which these derogations will be applied. The vast majority of companies to which legislation will apply in Gibraltar would in fact be small companies and in broad terms the schedule defines as a small company any company that in the relevant financial year sets aside at least two of the following three requirements: firstly, that the amounts of the company turnover does not exceed £4.8 million; secondly, that the company's balance sheet does not exceed £2.4 million and, thirdly, that the average number of persons in employment by the company does not exceed 50. A public company can never be considered a small or medium sized company.

There are three aspects to the directives that have given particular room for discussion and I would like to highlight those. Firstly, has been the question of commencement. As hon Members will see the Bill now provides that the Ordinance will come into operation on 1st April 2000 and it will apply to all companies whose financial year starts on or after that date. So, for example, a company whose financial year begins on 1st January will be subject to the Ordinance on the 1st January 2001 and not before. It will have to produce its accounts, if it is a private company, within 13 months from the end of that financial year. If the financial year ends on the 31st December the company then has until the end of February 2002 to produce its accounts. There will be quite some time to adjust. Furthermore, the Government have succeeded in persuading the UK and European Commission that in respect of the first time that accounts are published or produced they need not show the corresponding amount for the previous year. Thus in the case of a company whose annual accounts for the year 2001, for example, are first filed in February 2002, there is no need to show the equivalent accounts for 2000. This is significant and will ease the transition.

The second issue that has caused much discussion has been the question of penalties. The penalties are set out in section 12 of the Ordinance. The House will note that we have provided for a fixed penalty of £100 to be imposed by the Minister on receipt of information from the Registrar of Companies. On top of that there is liability to a fine if accounts are not filed but that liability extends to both the company and director. It should be noted that the fines are considerably less than those imposed under the equivalent UK legislation and in particular there is no provision for a daily default fine as there is in the UK. Mr Speaker, we have modelled our system of penalties on the Irish legislation which the UK and the Commission has found acceptable.

The third area that has caused some discussion has been what is referred to as the "audit requirement", the extent to which companies require to have the accounts audited. Here, Mr Speaker, we have decided to take the full benefit allowed by the directive which allows small companies to be exempted from the need to have their accounts audited. Accordingly, even though small companies will be required to file the abridged balance sheet that I have mentioned, neither these nor its general accounts will require audit. This removes an area of confusion that has existed on this issue under current Company Law. I should highlight that the exemption for a small company not to have to produce an audit does not apply to a company that trades in Gibraltar. This is purely as a result of a continuation of the existing system under which the Commissioner of Income Tax insists on audited accounts being prepared in assessing liability to Gibraltar tax and those particular provisions are contained in sub-section 11(3).

Mr Speaker, those three aspects of the Ordinance have been the most difficult and the ones that we have worked most closely with the industry in resolving. I now pass briefly to consider some of the other technical aspects of the Ordinance. Section 3 sets out an essential obligation, namely that the accounts must give a true and fair view of the financial state of the company. This requirement reflects the purpose of the directive. It is intended to give shareholders and prospective shareholders full information in

a common format across the Community. Sections 5 to 10 set out the basic principles of what the accounts must contain and provide in the Schedules for the format of those accounts. Section 9 provides the other major obligation, namely the need to deliver accounts to the Registrar. The format that is relevant to small companies is as set out in sub-section 9(3), either the format contained in Schedule 2 or Schedule 4. It is the format contained in Schedule 4 which is the abridged type of balance sheet which small companies can benefit from. As I mentioned earlier, Section 11 relieves small companies to have their accounts audited unless those companies trade in Gibraltar. Section 12 relates to offences. Again, as I mentioned, there is a fixed penalty of a £100 for failure to deliver accounts and thereafter criminal proceedings may be taken leading to a fine if the accounts are still not delivered. Section 13 dovetails with the Companies (Consolidated Accounts) Bill which deals with the provision of group accounts. Sections 15 and 16 deal with various voluntary options open to companies, for example, they may produce accounts in Euros and they may wish to circulate their accounts to the general public. Lastly, the Schedules themselves. These are largely of a technical nature. I have highlighted the ones that we believe are of special interest to the House, namely those that deal with the accounts of small companies.

Mr Speaker, the transposition of this directive is a significant event for our financial services industry. The Government are confident we have done everything possible to ensure that it can be adopted with the least possible negative effects on our industry. It will allow Gibraltar to continue to be a jurisdiction that complies with its legal obligations. I want to conclude by thanking the entire industry with whom we have worked very closely for their contribution to the exercise of identifying how the best form of transposition can be effected. The Government are committed to the continued welfare of this important sector. It is important, therefore, that we should continue to work together. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON A ISOLA:

Mr Speaker, it will come as no surprise to the Government that we will not be supporting this Bill. I think it is also fair to say that this Bill is not being brought to the House because anybody wants to but because there are reasons beyond that which necessitate that it be brought to the House. Obviously that is understood. Mr Speaker, the three items which the Minister has mentioned, namely the commencement date, penalties and audit requirements have indeed been the subject of much discussion and attention within the sector. Certainly, there was talk originally of a longer transitional period. Obviously it has proved difficult. The penalty has been based on Ireland and I think that is a perfectly reasonable thing to do and I am pleased that that has been accepted. Certainly the flow of the Bill that we have before us and what was originally discussed I think nearly a year and a half ago is very much better than it was. I think that the important part insofar as the industry is concerned, is being to take maximum advantage of derogations. It seems clear that that has happened and certainly with one exception Opposition Members do not agree with and that is the question of Section 11 subsection (iii) the question of the audit requirement. The view of the Opposition Members is that we do not see why the Gibraltar trading companies should be treated differently. It is simply a question of policy in so far as the audit requirements are concerned. It is not true or correct to say that Gibraltar companies have to file audited accounts with the Tax Ordinance because in fact that is the very provision that was amended in the Income Tax Office in this House where there is no longer a need to file audited accounts. Unless I misunderstood the Minister what he said was that there was such a requirement. In fact my understanding is that the amendment has led to there not being such a requirement.

Mr Speaker, we are also aware of the general discussions again over the last year and a half in the industry working with the Minister to review the Companies Ordinance and come up with amendments which will improve the workings of that. The information that I have is that the bulk of those proposals which

have been discussed at length are being brought to this House today with the exception of one which I assume will be brought at some stage in the future. That is entirely non-EU related. Mr Speaker, the reasons for our not supporting the Bill we have been through before. I am well aware that Government Members do not agree with the stand that we have taken on those issues but really this Bill puts into practice what we have in effect been complaining about which is the continuing burdens on the financial services sector and I am not going to pass any opinion or view as to whether I believe that the effects of the Bill will damage the centre or not.

The constant flow of EU directives that have been coming to this House for many years and continues to do so does not in effect improve the ability of Gibraltar companies to take advantage of the benefits of the club that we are supposed to belong. Basically what the industry has felt and continues to feel is that we are asked to join this club, we join the club, the rules are implemented as against us not those that are in our favour and the Minister will probably stand up and reply and say, "Well, we can passport". There are people passporting but in real terms to answer that when we discussed in this House just a week or two ago the insurance conference that was due to be held on an annual basis in this field, it is not happening. The reason that the Minister gave was that until the uncertainties of the insurance passporting are clarified Government did not feel it appropriate to have another conference. I agree with that. It is a perfectly legitimate stand to take but, why? The Minister cannot say, "Yes, of course it is OK, of course we can passport" and at the same time say, "We are not having the conference on insurance because the position is not clear yet". Either it is or it is not. I have got no doubt the Government are working to try and clear it but the fact of the matter is that today and for the years that have gone by that the sector continues to have this problem and I think that is a perception that is shared by Government. We will see in a moment if it is or if it is not. All is not well with passporting and we are playing with postboxing and other such arrangements to see if the question of recognition can stitch those pieces together in

order to make it work. Mr Speaker, we will not be supporting and will be voting against the Bill.

HON CHIEF MINISTER:

Mr Speaker, just to make sure that we are perfectly clear because the hon Member has used, in certain parts of his very clear representation of his position, language which is not precise. For example, he spoke to a commitment on our part to doing this. This is not a commitment, this is an obligation. Let us be clear for the purposes of Hansard. There is a directive which this legislation transposes which is not voluntary, it is compulsory and the options open to Gibraltar are either to do it in the best possible way, which is the option that we have chosen as a Government, or not to do it, declare ourselves in rebellion, prejudice every other effort that we are making not just in terms of the positioning of the Finance Centre internationally but any prospect of obtaining passporting rights as well as almost inevitably raining down upon Gibraltar the question of having it done on our behalf on terms which may not be as favourable as the ones that we as he says "maximising derogations", to quote his words. Those are the two choices and I know that the hon Member did not mean to suggest that the situation was any different but the language that he used may have left people with the unintended impression that there was somehow an element of choice here. Given that this is a 1978 directive, the hon Members and others may be asking "why are we doing it now if other Governments since 1978 have successfully managed to duck it?" The hon Member knows the answer to that as well and he will forgive me for posing both a question and the answer. The reason for that is that the United Kingdom Government has now been taken to the European Court of Justice and is standing on the doorstep of court rules without a defence - a position that the United Kingdom Government is not willing to tolerate. Therefore, the crisis facing us was not to impose this on Gibraltar or not to impose it. It was not to burden Gibraltar with this or to save Gibraltar from the burden of it. It was simply whether we did it ourselves on the best and most favourable possible terms or to have it done for us on terms which would almost certainly not have been the most favourable terms.

That is the choice and I think that if the hon Members wanted to be completely objective in their analysis of the political predicament they would focus it in those lights. The choice is not between doing it and not doing it, the question is between doing it ourselves or having it done for us. I will give way to the hon Member.

HON A ISOLA:

Mr Speaker, I understand that but surely at what stage or when will the question of our recognition and when will the acceptance, not by Spain that is a different problem, when will other Member States, when will that question be addressed with the UK primarily whose responsibility it is to ensure that these things happen because the same as we are complying with our obligations, other Member States have obligations to accept and recognise Gibraltar. When will that issue be addressed?

HON CHIEF MINISTER:

Mr Speaker, I am grateful to the hon Member for giving me the opportunity to answer that. There is no non-recognition problem. There is no Member State that is not recognising Gibraltar licensed institutions. Not even the Spaniards on this occasion are withholding recognition of the competence of the Financial Services Commission as a licensing and regulatory authority. What we have here is on the one hand a crystal clear obligation on our part to comply with the directive and on the other hand a disputed issue. What is the disputed issue that we and, until recently the United Kingdom, used to argue that the competent authority of Gibraltar had external capacity to notify? Having made the supervisory decision in Gibraltar which no one is questioning our right to do, can we then communicate that decision himself to his German counterpart or to his French counterpart or is it the position, as the Spaniards are arguing, that that external communication has to be done on our behalf by the United Kingdom because it is an external act of the Member State? The hon Member and I, I am sure, agree on what we think the correct answer to that question is but it is not a certain issue.

The European Community Legal Services have their doubts on it and what there is, therefore, is not a conflict of rights but on the one hand an unambiguous and arguable obligation on our part to transpose this legislation into our laws and again, on the other hand, an issue of whether the Gibraltar Financial Services Commissioner, whose competence nobody questions, whether he can speak abroad, whether he can communicate abroad or whether he has got to channel those through the Member State which, in our case, is the United Kingdom. It is not actually a question of we will not comply with our obligations until our rights are recognised because what is in dispute on the other side is not our rights but our interpretation of a limited function of the Financial Services Commissioner, namely does he have the international competence to communicate with other Member States or must the Gibraltar competent authority, the Gibraltar Financial Services Commissioner communicate with other Member States through our Member State, which is the United Kingdom, as opposed to directly with them. The only thing that I would say is that of course the hon Member says that the reasons why they adopt these positions are clear. Let me say what I understand them to be and that is that his position appears to be that Gibraltar should not transpose any more EU obligations in Financial Services, that we should place ourselves in a position of persistent and repetitive breach of our international obligations to extract what? I ask them rhetorically. What benefit does he think will flow to Gibraltar?

Mr Speaker, hon Members will forgive me for reminding them of this, but since 1996, without having got yet to the end of the road, we have made considerably more progress on passporting than they were able to make before. I am not making judgement as to why that is, it is a factual reality. Most of the progress that there has been in obtaining passporting rights has been since May 1996. The hon Members were less successful yet notwithstanding that they were less successful, notwithstanding that they had passporting rights difficulties as well, this did not deter them from transposing financial services legislation. What they are now asking us to do is to declare a state of rebellion which they did not declare when they were in the same or an even worse position.

Because they used to bring financial services legislation to this House and it was then not their position that they would not burden the financial services industry any more because they were having difficulty on financial services passporting. I just say that for the record. They are entitled in Opposition to change their position but so long as we understand that that is what they have done. They are now urging upon the Government a course of behaviour which we think is imprudent and which we think is irresponsible and which we judge to be contrary to the ultimate interests of Gibraltar and which, to boot, they did not recommend to themselves when they were on this side of the House and in a position to deploy that policy.

The Leader of the Opposition, as he is entitled to do, has also changed his position. His Shadow Spokesman for Trade and Industry has indicated that they will vote against this legislation because they do not think it is in the interests of Gibraltar. That was not his position in 1987. He may wish to say that subsequent experience has made him longer in the tooth. Yes, in 1987 he is quoted in Hansard as saying in relation to this very same directive, and I quote him at page 22 ".....why should the employees of that particular company not have the right to see the balance sheet and the profit and loss account of the company?....." which is what this directive does ".....which is responsible for their pension rights until somebody eventually decides in Government that they are going to comply with the 1968...." I think he meant 1978 " directives of the European Community to publish accounts under the Companies Ordinance". So in 1987 he was exhorting the Government, then the AACR, to get on with the transposition of this directive because it would give employees of companies who are responsible for their pensions the necessary degree of financial transparency. He then crosses to this side of the House between 1988 and 1996, introduces all the directives that he is required to, then goes back to that side of the House in 1996 and says "now do not do this directive because I think it is not in the interests of Gibraltar". As I say, the hon Member is perfectly entitled to change his mind as I am entitled to point out to everybody that that is what he is doing, changing his mind.

HON J J BOSSANO:

I am, of course, impressed by the fact that the Chief Minister attaches so much importance to everything that I say, that he has actually taken the trouble to research what I was doing in 1987 in the Opposition to be able to quote me. He must mobilise a lot of civil servants on my behalf, Mr Speaker, that is fairly obvious. He normally comes loaded with all this information about everything I have done. He has got the advantage that I can only quote him since 1991 because he is a newcomer and he can quote me since 1972 because I have been here since 1972. In case he does not remember or in case he has not been told, let me say that the position in 1991 was, in terms of passporting, that the British Government then said that if we did what the Bank of England recommended but which we did not have to do we would be given passporting rights in 1992. What the Government of Gibraltar, what the GSLP Government did was, rather naively, start off by believing the things the British Government did and increasingly stop believing in them as the passage of time showed them to be either unwilling or incapable of delivering anything that they were promising. What we have had since 1991 has been the British Government telling the Government of Gibraltar that we will get recognition if we do A. and then when we do A. they say we will get it if we do B. and then when we do B. they say we will get it if we do C. and that has been progressively going on. I imagine it still does and I imagine it was going on before 1988 but, of course, what happened in 1988 was that since we did not know to what extent it had been going on before we started from zero and we started off accepting what they told us until a number of years later down the road we found that there was, if we cared to look back, an increasing gap between what was supposed to flow from us doing things which nobody [Interruption] I did explain those problems in the House at the time anyway and they are in the public domain and the previous Government, like his Government, tends to say that their relationship with the Foreign Office is such a love affair that there is nothing ever going wrong. It was my unnecessary antagonism, according to him, that produced the problems that we had.

The position, as far as I am concerned, is that the transposition of our laws is an obligation that we have which is one side of membership of an organisation which was done in 1972 when I arrived in this House and which had another side to that which was benefits. We do not have the access to the benefits we ought to have and if there are things that we have not done, well Mr Speaker, in 1988 the backlog was astronomical because we had done practically nothing between 1972 and 1988. If I said 1968 at the time in 1987 it was probably because the 1968 rules which were there subsequently were changed. Much of the provisions which have been adopted by the Bill before the House fortunately are there for us to adopt because we have been such a long time in implementing because had we implemented the original requirement as they were in the original directives they would have been putting a greater demand. I imagine that those greater demands were subsequently diluted because the experience in other Member States showed that they were over onerous.

HON CHIEF MINISTER:

Mr Speaker, would the hon Member give way, just for a matter of fact. The directive in its present form dates back to 1978. The quotation that I attribute to him is 1987. By the time he was speaking in 1987 he was looking at exactly the same directive as we are now transposing. What happened in 1968 was history by then.

HON J J BOSSANO:

That may well be so. I can tell the Chief Minister that the degree of accessibility to directives in 1987 was considerably less than the degree of accessibility of directives now when in fact, if it takes the Foreign Office six months to get round to giving a copy of the directive when one asks for one, it used to take them several years so it is quite possible that the 1978 one had not yet got round to being delivered to Members of the Opposition in 1987. I was speaking from the information that was then available

to me. But I can certainly say that my recollection is that the original requirement on publication of accounts was already there when we joined the Community in 1972 and that in fact the flexibility on smaller companies came at a much later stage and as I have said, frankly, it is a good thing the AACR did not implement it originally when we joined in 1972 otherwise we would have been in a situation where when the less onerous provisions came in we would have already implemented the more onerous ones. But it is strange that the less onerous ones should be adopted by the Government for outside companies and they do not adopt it for companies that are trading in Gibraltar because of course it is true that a small company has got a definition which is a turnover of £4.8 million or assets of £2.4 million. Mr Speaker, even the notorious Master Service is not going to have an annual turnover of £4.8 million even though they have got a very lucrative contract from the Government. Even they will not have a balance sheet of £2.4 million notwithstanding the fact that they are going to be a very big company employing more than 50 employees. They will be a small company. They may have more than 50 employees but they are not going to have a £4.8 million turnover because the Government have given them a contract for £1.8 million and they certainly are not going to reach a £2.4 million balance sheet in their assets if they are starting off life with a couple of hundred pounds. That company will have to audit its accounts according to this law but of course the provision to audit the account will also apply to a small company that is a one man shop with a very small turnover and those small family businesses are the ones that could be helped in terms of the recognition by the Government of helping small businesses which they have done, for example, in the Bill before the House on a lower poundage on retail trade. The small shopkeeper presumably having to pay a few hundred pounds for having his accounts audited is a significant cost to that kind of business. If the Community allows us to do it for them then I do not understand why the Government do not do it for them. The fact that the Commissioner of Income Tax can require them to produce audited accounts presumably will only arise in those cases where the company goes to appeal because they dispute the assessment. In the legislation that was introduced in 1998 in the

House we did away with the right to require a company to produce accounts. Now companies in Gibraltar cannot be required to produce accounts. The position is that if the Commissioner of Income Tax is not satisfied with the declaration of profit by the company then he can arbitrarily determine what he thinks the real property is and in the context of the appeal to the tribunal set up by the Government, in that tribunal they can be asked to produce the accounts. That is my understanding of the law as it was changed by the Government.

HON CHIEF MINISTER:

Mr Speaker, I think they have to produce the accounts, what the hon Member has said is true of other documents but I think companies still have to submit their accounts with their returns.

HON J J BOSSANO:

I am almost certain that that is not the case and I think certainly the Government should revisit that legislation because when we voted against it one of the arguments was indeed that companies were being told they no longer required. What it did away with, as I recall, was the right of the Commissioner to demand it. He could request it instead of requiring it and requesting it meant that the provider of the account could say "no". That is our understanding. We could be wrong but if we are right then it seems to us that if they do not have to produce the accounts for the Commissioner of Income Tax unless there is a dispute and it goes to an appeal then to require them to have to audit accounts to submit to the Registrar when the EEC itself has weakened this provision for small companies, and although the small company in the case of the EEC's definition..... I would say, frankly, that a company that has got 49 employees and is turning over £4.7 million in Gibraltar is not a small company, in Gibraltar it would be a very big company, but if it is anything below that threshold and below the threshold means that although of the 1,400 employers we have got in Gibraltar I think we have got something like 1,200 who have less than 10 employees. All those small companies, I would have thought, having to employ an auditor to do their accounts in order

to comply with the law when under Community law they would not have to do it in another place, it seems an opportunity is being lost by the Governor and although we object to the fact that as a matter of policy we have not been able to have a position where the British Government have in exchange for this House proceeding with the whole draft of EEC obligations, the Amsterdam Treaty, the Maastricht Treaty and everything else we have still got all the problems we had before we did all those things and that is something we feel very strongly about, within the context of the fact that the Government clearly have to look at it in a different light in the sense that they have got really a pistol to their head and either they do it themselves or they will find themselves with it being done. Presumably if it had been done by the UK the small shopkeeper would have not been required to produce accounts, he may wish that they had done it in the UK.

HON P C MONTEGRIFFO:

If I can deal firstly with this point, there is some confusion here that I think requires to be clarified. The hon Member has ended his contribution by actually stating "if the Ordinance was introduced in another way small companies resident in Gibraltar would not be required to prepare accounts." Let us make sure we know what we are talking about here, Mr Speaker. All companies have to prepare accounts. The only issue we are talking about with regard to sub-section 11(3) is whether they have to be audited or not. The directive would allow all small companies to be exempted from the need to have them audited as opposed to produce accounts. Strictly speaking, the sub-section 11(3) does not actually say that small companies trading in Gibraltar have to have an audit. What it actually says is that they are not exempted from the need to have an audit which means that whether a small company that trades in Gibraltar has an audit or not depends on all the other aspects of company law in Gibraltar. Some hon Members may know there are differences of view in Gibraltar between the legal and the accounting professions and different practitioners within those professions as to whether existing Gibraltar law irrespective of this new Bill actually requires company accounts to be audited or not audited. What we have

sought to do here, and this Ordinance has been the subject of a lot of discussion, even negotiation, with different parts of the industry that were each protecting different interests, is actually to neutralise the position with regard to audits as it applies to companies that trade in Gibraltar. The way the Government would see it is that it makes administrative sense from the Commissioner of Income Tax point of view for companies, when they submit accounts, to have those audited accounts because it facilitates the process of assessment to tax and indeed the Mutual Assistance Directive, when that was transposed, did not actually remove the requirement to have an audit, it is silent on the point. Therefore, the situation as it currently is now is that the effect of this Ordinance will be all companies that are not trading in Gibraltar are specifically exempted from the need to present an audit. Those companies that do trade in Gibraltar, whether they do an audit or not is a matter of the application of general law. There are differences of view as to whether accounts prepared in Gibraltar require an audit or whether that requirement can be waived. From the point of view of the Commissioner of Income Tax's administrative convenience it is certainly the preference that accounts should be audited because it facilitates the whole process of assessment to income tax generally. That, basically, in a nutshell, is the situation. I would ask hon Members to carefully look at section 11(3). It is not saying they have to have the audit. It is saying they are not exempted from the need to have it and one falls back on the general law. I will give way if the hon Member wishes.

HON J J BOSSANO:

Mr Speaker, as I read this, 11(1) says that subject to sub-section (3) in respect of a financial year a company that qualifies as a small company, that is to say for example, a company that has got sales of less than £4.8 million the requirement on the appointment of auditors and the audit of accounts would not apply to that company in that year. That is what 11(1) says. Section 11(3) says that that sub-section (1) will not apply to a company that has income liable to tax under the Income Tax Ordinance. It seems to me that in the absence of sub section (1) applying to a

local company, the Ordinance as a whole treats a small local company as if it was not small.

HON P C MONTEGRIFFO:

Mr Speaker, the hon Member is confused in terms of how a small company is treated. The directive allows a territory to extend an exemption with regard to audit to small companies as it allows us also to extend other exemptions like for example the fact that small companies present an abridged balance sheet instead of accounts. All those exemptions will be able to apply to a small company that trades in Gibraltar. The exemptions with regard to what type of filing is made can apply fully in respect of such a company. The only thing that has been extracted from the application to a small company trading in Gibraltar is the specific exemption from the need of an audit. That has been done primarily as a result of a lot of discussion and consultation with the industry that had different views as to the wisdom and desirability of exempting small companies that traded in Gibraltar. Accordingly, the view taken by the Government was that we should not adjudicate on that issue in this Bill that all that we are doing here is preserving the position of small companies that trade in Gibraltar with regard to an audit as it was under general law and I am not taking the opportunity of this Ordinance to determine the issue one way or the other.

HON J J BOSSANO:

I am grateful to the Minister because we would like to be clear precisely what the effect of this is. The requirement to appoint an auditor and to audit the accounts, is that a requirement that we are introducing for the first time in respect of the transposition of this directive and which previously was not a requirement because if that is the case then it seems to me we are doing three things. We are saying all companies will now appoint auditors and audited accounts except those companies that have got sales of under £4.8 million unless they happen to have those sales as a trading organisation in Gibraltar liable to tax. That is how I have understood the meaning of section 11. So what we are saying is

it applies to everybody except to those who are small as defined unless those who are small as defined are trading in Gibraltar and declaring profit in Gibraltar in which case what we are doing is we are putting the local small companies back in the definition of the big companies. If that is so then we do not think it should be done.

HON P C MONTEGRIFFO:

We are putting it back to where the general law put it regardless of this Ordinance. There are differences of view as to where the general law put it, whether an audit was required or was not required. There has been extensive discussion with the industry as to whether we should have taken the opportunity of specifically exempting all small companies from the need for an audit or whether, bearing in mind that the threats of the directive apply to the non-domestic trade, so to speak, whether we should not adjudicate on the issue of whether small local companies needed them or not, we should not adjudicate that issue at the time of the transposition of this directive but leave it unattended. What we have done is not extended to small trading companies the specific exemption that could have been extended to them for audits not to be required.

HON J J BOSSANO:

Is the income liable to assessment under the Income Tax Ordinance not also the income of qualifying companies?

HON P C MONTEGRIFFO:

Absolutely so. That would be the case and these qualifying companies fall in the category of companies that would have a liability of assessment of tax under the Income Tax Ordinance and not the sort of company that it was felt, in consultation with the industry, it would be appropriate to exempt.

HON J J BOSSANO:

So they would not be exempt even though they would be under the levels of a definition of a small company?

HON P C MONTEGRIFFO;

That is right, if they did produce accounts for the purposes of the Income Tax Department, rather than as a matter of policy, most qualifying companies would have produced audited accounts and if a qualifying company, for example, is a company that undertakes financial services which is usually the case, then other requirements under regulatory demands would require audited accounts.

Mr Speaker, I do want to make some reference to this issue of postboxing and the extent to which we are delayed in achieving a mechanism for this. I think that it is unfair to suggest that we are not significantly advanced in the postboxing agenda generally. The fact is we have got recognition of rights both in insurance and banking. We have recognition of rights from HMG directly by way of ministerial commitment. The issue, which is postboxing, is one which as hon Members know is of a technical nature but has the effect indeed of frustrating much of our passporting potential so to that extent I would agree with the hon Members but it is not an issue which is capable of being traded off. This is what I think divides both sides of the House. The idea that these issues are capable of simply being set off one against the other as if that was the way that one could deny our need to implement legal obligations. Our requirement to implement these directives are a legal obligation irrespective of whether or not the UK has infraction proceedings and the fact that the UK has not yet given practical effect to our passporting rights is simply not a trade off available to Gibraltar. A trade off that as the Chief Minister said was not a position that the hon Members took themselves historically when they were in Government and not a position which this Government believes it is responsible for the Government to take. Indeed, I finish by saying, not a position which the industry is prepared to take. It is worth highlighting the

industry itself supports the Government's transposition in this method and in this way and the industry is not prepared to say there should be a trade off. The industry takes the view that it is proper that we should implement these obligations unfair though they seem in a broad sense because the alternative, which is for legal obligations to be implemented otherwise than through act of this House, is less acceptable to the industry and should be less acceptable to us all. Those are the realities of the situation. The reality is not that we have a trade off that we choose not to take. The reality is that there is no trade off to be had and the industry understand that and the industry accordingly support the Government in the position it has adopted.

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

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

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

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 later on in this meeting.

THE COMPANIES (CONSOLIDATED ACCOUNTS) ORDINANCE 1999

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 83/349/EEC as amended by Council Directive 90/604/EEC, Council Directive 90/605/EEC and European Parliament and Council Directive 94/8/EEC and Council Directive 99/60/EC on the consolidated accounts of companies, 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 the Seventh Company Law Directive and is closely connected to the Fourth Company Law Directive which we have just dealt with. Much of the background with regard to this Bill is similar to that with regard to the Fourth Directive and therefore I will not repeat the general issues that have been the subject of discussion with the industry. Of course, the publication of accounts which the Seventh Directive also deals with, is in this context applicable in the case of group accounts. The House will note that like in the case of the previous Bill, the Ordinance applies to companies whose financial year begins on or after the 1st April 2000. Thus a group of companies will not have to submit their accounts until 10 months, that is for a public company which most groups will be, after the end of that financial year. This will give a considerable lead-in period. The Government's discussions with the industry have indicated that

this Ordinance is not expected to be problematic in Gibraltar since there are few Gibraltar-based groups to whom this Ordinance would apply and those groups will not find any great changes in the way they provide accounts. Most of the Ordinance is taken up with defining what a group is and how to identify a parent and subsidiary undertaking. Sections 7 to 14 deal with operation of group accounts and the Schedules again lay down common formats. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON A ISOLA:

Mr Speaker, for the same reason as the Minister has said, we dealt with the Fourth and we will be dealing with the Seventh, this is the lesser poison of the marriage of the Fourth and the Seventh and as the Minister has rightly said I think that the contents of this Bill certainly has a lesser importance and a lesser impact to the local community and I do not really see how many people it could or could not affect in Gibraltar. There is really little I can add to what we said in respect of the previous Bill. We will be not supporting this Bill for those reasons.

HON J J BOSSANO:

Can I ask, Mr Speaker, is this the provision of the parent subsidiary relationship, is this the same where there was a problem initially in that the Gibraltar parents had the problem of recognition in other Member States? This is not affected by them?

HON P C MONTEGRIFFO:

Mr Speaker, the hon Member is referring to the directive which dealt with parent and subsidiaries which provide for a situation where if a parent had a certain type of structure of subsidiaries underneath, that taxation would take place at the level of the parent rather than a subsidiary and Gibraltar sought to introduce those regulations in a way that would allow the parent when it

declared dividends to do so in a way that was tax competitive. This is nothing to do with that. The definition of parent subsidiary here are purely to determine in what circumstances group accounts had to be filed.

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

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

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

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 later on in this meeting.

THE BUSINESS NAMES REGISTRATION (AMENDMENT) ORDINANCE 1999

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to amend the Business Names Registration Ordinance to make provision in some cases for annual notification and registration, for the registration of websites established in or from within Gibraltar and to make a number of minor amendments for the purpose of the more efficient administration of the Ordinance, be read a first time.

Question put. Agreed to.

SECOND READING

HON P C MONTEGRIFFO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill and the other four Bills on the Order Paper represent a package of measures that the Government have been in close consultation with the industry on in an attempt to improve and modernise some aspects of commercial and financial services legislation. This particular Bill is relatively straightforward. It does, essentially, two things. Firstly, it makes provision for annual notification and registration of business names first registered after 1st January 2000. It introduces a regime whereby in the future business names are going to be much better structured and better regulated than is the case at present. Secondly, it makes provision for the registration of business websites established in or from Gibraltar. It is clear that there has been some speculation as the extent to which this Bill might interfere with the fact that people have websites. This only applies to business websites. In Section 2 of the Bill it does, in the context of the definition of business, insert a new sub-definition relating to websites and it defines websites as being websites that are used in connection with or for the purpose of promoting in any way any trade, business or profession. It is in a sense an attempt

to start regulating the use of the internet for business names for business purposes. It does not go as far, for example, as legislation that other territories as, for example, Bermuda have introduced in actually trying to regulate internet commercial activity from their jurisdiction. We believe that the Ordinance will have the advantage of making the Business Names Registry more efficient and better run. At present I can tell the House that business names registration tends to be quite inefficient in that there are many business names registered that then fall to be defunct and are never actually used by business people and they provide an impediment for people who want to register those names in the future. These provisions, whilst not affecting the existing business names, will as from 1st January 2000 require annual notification that the name remains a name which is being used for business purposes and the particulars respect that name is updated as would be the case with, say, a company et cetera. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON A ISOLA:

Mr Speaker, in so far as the first aspect of what the Bill intends, namely to, in effect, regulate business names and bring them almost in a parallel with the way in which companies are treated in terms of annual notification and formalise them more. I think the Minister is right in saying there are some business names that have been registered for years and are simply left and there is no requirement and they are just simply left there and they are of no benefit to anybody and they do in fact restrain other people who may want to use a similar name. With that aspect we have no problem and we think it is a positive improvement to the Ordinance. With respect to the website, we accept the comments made as stated in Clause 2 of the Bill in relation to business websites. I know that the Chief Minister has said in the House that they are taking advice or looking into the whole business of e-Commerce and as to how that in relation to gaming and other matters should be legislated. To deal with the registration of the business and having to register the name there is already a

system I understand within the main names where two people cannot have the same main name. I do not know how that will conflict, if at all, with the Bill that is proposed because one has, for example, the www.Gibraltar.gi which is the website but then somebody as a business address could have [www.Gibraltar.gi/\(their own address\)](http://www.Gibraltar.gi/(their own address)), is that a website? The fact that a lot of people have added it on their own names to that and have set up their own websites, I am not so sure it falls within the definition of the website. I have not looked into it in a more technical way as to what website means. It is certainly a site on the web so perhaps it could be all encompassed and one can capture that site also.

HON CHIEF MINISTER:

This provision does not deal with registration of the business. This is not a regime to register websites. It is simply to extend the existing business names registration regime to the name of one's website. After all, if one has registered the name Isola & Isola in Gibraltar, why should the law of Gibraltar prevent me from carrying on a business under the name of Isola & Isola in Irish Town but not on the internet? It is only to ensure that people cannot use on the internet names which if one used it ashore, or if one used it outside the internet one would need to register or one may not be able to use it because it is somebody else's business name. That is all that this deals with. It does not deal with registration of websites. This is not about registering or regulating or controlling websites but simply about extending to people who have a proprietorial interest in a name the same protection when that name is used by others on the website as they presently enjoy in all other methodologies of doing business. All the legislation seeks to do is if one has a right to a name one's right is extended to the website so that others cannot use it from Gibraltar on the website and argue that they are not doing business in Gibraltar.

Mr Speaker, I do not know if when the hon Colleague responds he will be able to cast any light. I am not particularly computer literate but my reading of the definition of business would seem to

cover the situation that he has just described. In the definition it says "business" by inserting "and the establishment of operation of a website" and that is not the end of it, then it goes on to say "(a) in or from within Gibraltar or through an internet service provider in Gibraltar". It seems to me that the process that he describes in effect of a sub-website is a website provided through an internet service provider.

HON A ISOLA:

I do not think that is what it intends to catch in the sense that one can set up from Gibraltar a website that is ".com" where the service is not in Gibraltar. I think that is what (a) and (b) intends to catch. I can set up a website in Spain from Gibraltar.....

HON CHIEF MINISTER:

If one establishes a website in Spain then the law in Gibraltar does not catch you, that is true.

HON A ISOLA:

The Chief Minister has said before that it would be caught because it is either in or from or through an internet service provider. What I am saying is that one can still register a website outside Gibraltar, obviously through a local provider, my question is still there in terms of the definition of the website. Perhaps the proviso at the end simply says that if one has a site of whatever address and one is promoting business from it, then.....

HON CHIEF MINISTER:

The hon Member is absolutely right and that would be a matter for the hypothetical Bill that the hon Member refers to. We can only try to control the use of names where the website is in Gibraltar. We are only purporting to seek the obligation to register the name of websites established in Gibraltar through local internet service providers. If there is a clever way, which I am sure there is, of establishing a website elsewhere and accessing it without passing

through an internet service provider in Gibraltar, if that is technologically possible, which I do not doubt that it is, then certainly it would not be caught by this provision.

HON A ISOLA:

I think it would be because the establishment or operation of a website whether one sets up in Gibraltar or not does not matter, if one were to do that through any other provider one would still be caught.

HON J J BOSSANO:

There is another matter of principle which is raised by the Bill which has not been mentioned, that is clause 3 amends Section 2(a) of the principal Ordinance to substitute the Minister as the person responsible for appointing the Registrar and the Assistant Registrar and determining the location of the Registry. Is the Registrar a civil servant? I can understand that the Governor has no reason to be deciding the location of the Registry but if the Registrar is a civil servant is there not a requirement that civil servants should be appointed by a Governor and not by a Minister? If we are on the verge of becoming independent then I would like to know.

HON P C MONTEGRIFFO:

I have not got a response to the hon Member without looking at that in detail and I can certainly come back in Committee Stage on that. The general thrust of that is simply to replace "Governor" with "Minister" in what is a piece of legislation within a defined domestic matter area. It is neither more nor less than that. The Business Names Registry is subject of contractorisation of Companies House, they run it as well, and there will be no change in that arrangement but I can certainly look at the specific provision if that is the interest of the hon Member.

HON CHIEF MINISTER:

I see what the hon Member is saying but I think there is an element of cross purposes. Certainly, if the Registrar was to be a civil servant he could not be appointed in the sense of being recruited from the outside of the civil service by a Minister because Ministers do not appoint civil servants. But this is appointed in a sense of designation, in other words, who designates who the Registrar should be? That is the sense in which the word "appointed" is being used here. If the Government wanted to appoint, that designation would be made, but if it were the Financial and Development Secretary or the Accountant-General or some other civil servant and the Government wanted to designate somebody else, provided it was an appointee who had been appointed by the Governor to its public service job, that also would be okay. I think the hon Member is describing a third category which is if the Registrar is to be a civil servant but not somebody who is already within the body of civil servants, can a Minister go away and recruit from the street somebody to be a civil servant for the purposes of appointing him. If that is what the hon Member is saying then certainly that is not the intention here. It is not the intention that Ministers should appoint in the sense of recruiting appointees to the public service. Ministerial power could only be exercised in favour..... if he wants to exercise it in favour of a civil servant it would have to be in favour of somebody who is already a civil servant or in favour of somebody who is not a civil servant but who then remains not a civil servant a private contractee for example. I think that is the point that the hon Member is making.

HON J J BOSSANO:

Clearly the point is what is the effect of the change? I am making that point but I am making that point in the sense of asking. It seems to me that the change has been done not as a matter of a major policy change but simply saying where it says "Governor" put "Minister". It is obvious from the fact that the new clause 3 amending section 2(a) says put "Minister" in the three places where the "Governor" is and I am saying that the location of the

Registry, which is one of the three places, then obviously the Governor could only mean there, the Minister because why should the Governor as the representative of the Crown take a decision whether the Registry should be in Main Street or in Europort. I think in the original Ordinance it must have been intended that the appointment of the Registrar by the Governor was in his capacity as the representative of the Crown appointing the Registrar. If that is the case then it may be that inadvertently we are changing that relationship and all I am asking is for it to be clarified which can be done when we come to the Committee Stage.

HON CHIEF MINISTER:

Mr Speaker, the intention is that the Minister should be allowed to designate the Registrar but if the hon Member is concerned that the section as amended means or could mean or actually does mean that Ministers may appoint civil servants, that was not the intention and we are perfectly happy to move an amendment to amend section 2(a) so that it reads "designate" and not "appoint", so that it makes it perfectly clear that what we can do is decide who should be the Registrar but not to recruit people into the civil service, if that is what the hon Member is interpreting the word "appoint" to mean used in that context.

HON J J BOSSANO:

Mr Speaker, I am not seeking to interpret it, that is how I have read it because it says if the Ordinance is being amended to substitute the Minister as the person responsible for appointing the Registrar. I am drawing attention to that because certainly reading it it seems to be saying that. That is the explanation that is given in the Explanatory Memorandum and the Explanatory Memorandum is there to explain to us what is happening. That is the explanation that I have read.

HON P C MONTEGRIFFO:

As the hon Member points out, that is the explanation given in the Explanatory Memorandum. It may not be exactly the way that the clause itself reads and we will look at that at Committee Stage. I simply want to end by reiterating that what are the basic matters underlining the whole philosophy of this Ordinance is protection both for those businesses that work in Gibraltar and indeed for the reputation of the jurisdiction itself. Bearing in mind the degree to which as the hon Member knows we scrutinise company names and business names and whether Gibraltar can be used or royal can be used or imperial can be used or whether the Rock can be used, it seems absolutely absurd to have a completely unregulated names system with regard to internet use, that anybody in the internet could depict a website from Gibraltar using whatever phrase he wanted without any type of regulation in a way that could undermine the reputation and probity of the jurisdiction. That has been a major consideration in deciding to introduce some degree of check, albeit within the technological constraints that exist in this matter to this issue.

Question put. Agreed to.

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

THE LIMITED PARTNERSHIPS (AMENDMENT) ORDINANCE 1999

HON P C MONTEGRIFFO:

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

Question put. Agreed to.

SECOND READING

HON P C MONTEGRIFFO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill before the House seeks to modernise various aspects of the current legislation applying to limited partnerships and it does so in two important ways. Firstly, it allows for the re-registration of a company limited by shares or by guarantee or both as a limited partnership and as hon Members will see this provision dovetails with the provisions of the Companies (Amendment) Ordinance which the House will be considering shortly and, secondly, it purports to give and does give the limited partnership in Gibraltar separate legal personality. In this we have followed the precedent that exists in Scotland where limited partnerships have legal personality. As would be expected, Mr Speaker, in giving effect to those two provisions extensive clauses exist making clear what the position is with regard to a number of matters obviously the requirements for re-registration in the first case and in the context of legal personality ensuring that, for example, mortgages and charges that might be registered against a limited partnership are done so in a way that is similar to the case with a company. The enactment of this legislation will add a further product that the financial services industry will be able to promote from Gibraltar. Limited partnership legislation has been the subject of extensive reform in other jurisdictions over the last few years, notably Jersey, several years ago significantly modernised its limited liability partnership in an attempt to attract a certain type of international business. We believe that these amendments will provide useful facilities for our financial services industry. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON A ISOLA:

We understand the process it has gone through in respect of this Bill. Also, we appreciate and agree that in fact it is another product which will assist the financial services sector and consequently we welcome and support the Bill.

HON J J BOSSANO:

Mr Speaker, I know the date is not a long way off, 1st January 2000 but there is no particular reason, is there, for delaying the commencement date to 1st January because the explanation that was given for 1st January was to delay eventual requirement in the company accounts Bill but I would have thought it would have been better not to have started on the same day as we are starting the other requirement, frankly? And to have given everybody the opportunity of, for example, if they saw benefit of converting from a company into a partnership before 1st January rather than having to do it after the obligation and the EU law had already been put in?

HON P C MONTEGRIFFO:

If the hon Member looks at the Bill transposing the Fourth and the Seventh, the obligations there do not start till April 2000. It should be said as well that although there is the ability to convert from a limited company to a limited partnership, the provisions of the Fourth and Seventh Company Law Directive apply to limited partnerships also if all the partners are limited companies. The only situation in which they do not apply is if one of the partners is not a limited company but an individual. Whilst there would be some work that might transfer from a company to a limited partnership and there might be a general partner and therefore the Fourth and the Seventh would not be applicable, in many cases where there might be conversion, it might be for reasons which are not connected with the Fourth and Seventh compliance.

Question put. Agreed to.

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

THE COMPANIES (AMENDMENT) ORDINANCE 1999

HON P C MONTEGRIFFO:

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

Question put. Agreed to.

SECOND READING

HON P C MONTEGRIFFO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill introduces a number of changes to the Companies Ordinance in a different variety of areas applying to companies. Many of the changes simply modify the legislation and some of them do no more than introduce into Gibraltar law which is already in place in the UK law. Some parts of the law are, however, peculiar and special to Gibraltar and follow close consultation and work with the industry and in particular with the Finance Centre Council.

Mr Speaker, the Bill is a detailed and long Bill and what I propose to do is go through the principal changes which I believe the House may want to focus on. Firstly, the Bill makes provision with regard to companies limited by guarantee to make them more attractive than is currently the case. Essentially, the amendment will allow a company limited by guarantee to make it possible for a person to participate in the divisible profits of such a company in a way which will make such a company more attractive in estate

planning purposes. Currently, such companies cannot divide profits in the way that I have indicated. Secondly, Mr Speaker, and perhaps a large chunk of the Bill introduces a regime for re-registration of companies from one form to the other. The essential conversions that are permitted are the following: Firstly, the re-registration of a limited company as unlimited. Secondly, the re-registration of an unlimited as limited. Those two conversions exist in the UK and follow UK law. Thirdly, the re-registration of companies limited by shares as companies limited by guarantee and not having a share capital. Fourthly, re-registration of a company limited by shares and not having a share capital as a company limited by shares and, lastly, the one that we dealt with or referred to in the previous Bill, re-registration of a company limited by shares or guarantee or both as a limited partnership.

Further provision clarifies the position with regard to free incorporation actions. There is then provision made for the position with regard to return of allotments out of time, basically giving the Registrar of Companies power to allow the filing of returns out of time unless there is a dispute between shareholders, in other words facilitating that whole process. There is then a very large section dealing with the position of secretaries and providing for a register of secretaries and also re-defining some of the duties of secretaries to companies. These provisions, as all the others, have of course been the subject of close consultation with the industry which has felt that such change would be beneficial to the company management industry.

A large section deals with the ability of companies to purchase their own shares. This type of legislation is commonplace in the UK and has been slow at being introduced in Gibraltar. The new sections, which largely follow the UK legislation, now brings us up to date.

Finally, I would highlight, the ability now to be contained in the legislation for the Registrar to restore to the Register dissolved companies. The current position requires an application to the

Court in those circumstances and that is costly and time-consuming. This provision allows the Registrar, in certain circumstances, itself to re-register companies although there is provision for the Court to do so as well in other circumstances.

In general terms the Bill will modernise company law in an important number of senses. It is very much a compilation of different areas for amendments that the industry has long wanted to see introduced in Gibraltar and therefore we are very pleased to be able to have put them together in one Bill and to give this boost to the industry that is affected by it. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON A ISOLA:

Mr Speaker, we again are fully aware of the consultation and the wish of the sector to see these changes brought about. We support the changes. We think that they improve and facilitate the new products one of which we have just dealt with in the previous Bill particularly on some of the practical aspects. The facilitation of return of allotments at times has been a nightmare for many people, there is a very short time available for the ultimate application that one makes to court and this will now facilitate it. I think it is an improvement as indeed the question of the re-registration of companies that have been dissolved or struck off. Generally, Mr Speaker, I think, as the Minister has said, this will improve the products we already had. In many instances it will put us at a par with UK legislation on many of these aspects. We actually welcome and support these measures.

HON P C MONTEGRIFFO:

I just want to add something, Mr Speaker, with your leave. It is something which perhaps I should have mentioned as one of the important aspects of the Bill, which is, the Bill also makes provision for a company to stop having a company seal if it so

wishes. That is another provision which I think is not of immediate importance to many companies but it is a cost and in today's world many companies might think that they do not need a seal and they can actually keep documents other than under the company seal and that is a provision that is now being introduced which will give them the latitude of either deciding to have one or not having one.

Question put. Agreed to.

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

The House recessed at 5.20pm.

The House resumed at 5.40pm.

THE REGISTERED TRUST ORDINANCE 1999

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to make provision for the registering of a trust deed where registration is required under the terms of the trust deed and for the keeping of an index of trusts registered under the Ordinance, be read a first time.

Question put. Agreed to.

SECOND READING

HON P C MONTEGRIFFO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this is a short Bill that provides for a facility for registering a trust and thereby proving its existence. Hon Members will know that the concept of the trust is largely unknown in civil law jurisdictions. It can therefore sometimes be difficult to persuade the authorities of a civil law country as to the existence of a trust and its effects. The possibility of registration means that a trustee or anyone else would be able to provide an official document stating the date of registration of the trust and thereby confirming its existence. I should stress that this is only a situation that arises where a trust deed requires for the registration of the deed. It does not affect the situation that currently pertains to most trusts which is that they are not registrable and indeed would not have to be registrable in the future. Hon Members may be aware that there is one other category of trusts commonly known as protection trusts under Gibraltar law which do require registration and therefore conceptually we are not doing anything which is novel in Gibraltar, we are simply creating another category of trust instruments which is registrable, albeit within the parameters I have indicated and of course purely on a voluntary basis if the settlor when establishing the trusts decides that he would like it registered. It is very much aimed at those civil law clients using trusts that believe it would be useful to demonstrate the existence of a trust through the registration process that I have indicated and is set out in the Bill. It is a relatively small measure but again in consultation with the industry we are assured that it would be useful in the service they provide to their clients. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON A ISOLA:

As I said before, we will be supporting this Bill. We are aware of the representations made. Clearly, the Bill, as the Minister has said, is an entirely voluntary measure and therefore the settlor can choose whether he wishes to be registered or not even if the trust is in fact registered. From the Bill it is clear that a copy of the trust is not required to be deposited but simply evidence of the registration. To that end it is a useful piece of evidence should it at any time be questioned or challenged either through litigation or otherwise and for those reasons we think it is an appropriate and useful measure as the Minister has said also particularly in relation to civil co-jurisdictions where the concept is difficult to gather and the fact that the registration I think would also help in its use and consequently in the financial services sector's ability to use and exploit the trust concept within Gibraltar.

Question put. Agreed to.

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

THE SOCIAL SECURITY (EMPLOYMENT INJURIES INSURANCE) ORDINANCE (AMENDMENT) ORDINANCE 1999

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Social Security (Employment Injuries Insurance) Ordinance, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. The purpose of this Bill is self-explanatory and is simple and contained in the Explanatory Memorandum of the Bill. Hon Members will recall that in my Budget Speech I announced that the maternity pay would be shouldered by the Government and I also announced that as an additional help both to business and to the contributor, when a person was not at work by virtue of her accessing her maternity leave entitlement that such a person would also be exempted from the need to pay a Social Insurance contribution. This Bill delivers that last item in respect of the Employment Injuries part of the Social Insurance stamp and other Bills on the Order Paper achieve that end in respect of other parts of the Social Insurance stamp. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON J L BALDACHINO:

Mr Speaker, we will be voting in favour of this. The Chief Minister said in his contribution, as far as we can gather, the accreditation for the non-payment of maternity was already enshrined in the Social Security Insurance Ordinance?

HON CHIEF MINISTER:

That is not the advice that I have had. This particular Bill only deals with the exemption from paying. At the moment, if one is absent from work by virtue of maternity leave, one is still in employment and since one is in employment the obligation to pay one's social contributions subsists. When we come to the same provision in relation to the Social Insurance proper part of the stamp, I shall be explaining to the hon Member the means by which credit will be given because of course it is very well to exempt somebody but one cannot then deprive them of the

benefits that they would have had from the contribution. That does not arise in the case of employment injury.

HON J L BALDACHINO:

The only difference, if I am right and by what I understand, is that the maternity allowance shall be paid for a maximum of 14 weeks. According to the Social Security Insurance Contributions Regulations under Section 15 it states "Maternity: a contribution as an employed person or a self-employed person shall be credited to an insured woman for any weeks in which she is confined. For each of the six preceding weeks and for each of the six succeeding weeks provided the contribution as an employed person or self-employed person is not payable for that week". Our understanding is that it is covered by that under the law.

HON CHIEF MINISTER:

Mr Speaker, that would be a different thing and when we come to amend those Regulations as we must consequent upon the passing of this Bill and the others, that is the week of confinement and six weeks before and the six weeks after. Maternity leave is not defined in accordance with that strict period. Maternity leave under the directive and maternity pay under this provision is not limited in the time period to those weeks of six weeks pre and six weeks post and the week of confinement itself. It is a 14 week period which I suspect one can take more or less when one likes. It does not have to be taken in connection with the period of confinement.

HON J L BALDACHINO:

We thought we had to bring this to the notice of the Government. The other thing is the Ordinance.....

HON CHIEF MINISTER:

Mr Speaker, I have not understood him entirely, the section that he read from the Regulations relating to credits in respect of the whole stamp or in relation to just part of it, under what Ordinance is that?

HON J L BALDACHINO:

It is stamps because it is under the Social Insurance Contributions Regulations.

HON CHIEF MINISTER:

Mr Speaker, if that provision remains law it will have to be changed any way because it is not co-extensive in time. These provisions are much more flexible and movable than those particular provisions. What we are doing here is not already provided for in law but if what the hon Member is saying is correct, and I will have the officials look into it, there are other provisions of law which would have to be eliminated to make space for these.

HON J L BALDACHINO:

That is what I was trying to bring to the notice of the Chief Minister. This one had to be changed under the contribution regulations because otherwise it is in conflict with the other one.

HON CHIEF MINISTER:

Mr Speaker, I will have the point that the hon Member has raised looked into and we would repeal when we come to do amendments to the Regulations anyway, if what he is saying is correct.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

THE SOCIAL SECURITY (INSURANCE) ORDINANCE (AMENDMENT) ORDINANCE 1999

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Social Security (Insurance) Ordinance, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this is the Bill which deals with the principal part of our Budget announcement which is the transfer from the employer to the Government of the burden of paying that amount of maternity pay for the minimum number of weeks that it must be paid under the directive in respect of maternity pay. The hon Members will recall that when they transposed this directive into the Laws of Gibraltar under the Employment (Maternity and Health and Safety) Regulations 1996 the obligation to pay the maternity allowance was imposed on the employer and that was one of the things that we altered in the Budget. Mr Speaker, highlighting the principal effects of this Bill, Article 2 in subsection (iii) by the addition of a new sub-clause (iv) to Section 7 of the principal Ordinance does what the previous Bill did, that there would be no contribution payable under the Social Insurance Ordinance for any week during the whole or any part of which the person was absent from work in exercise of her maternity leave rights under the Employment (Maternity and Health and Safety) Regulations.

Mr Speaker, I will be moving amendments to the Bill in so far as it affects clauses 5, 6 and 7, principally to tidy up the organisational layout of the Bills. Hon Members, I understand, have a copy of my letter to Mr Speaker on that matter and because the amendments are perhaps not easy to follow with such short time, I have also circulated to hon Members an annotated copy of the new Bill as it is affected by the letter where the amendments that I would be moving. Hon Members will see that there is a manuscript on the photocopy of the draft Bill that has been circulated to them now. It says "those squares indicate a move to text" and underlinings indicate "insert text." As annotated these sheets of paper reflect the Bill as it looks consequent upon the amendments which I will be moving.

Mr Speaker, the Bill as I have said, provides for the fund to pay 14 weeks maternity leave at the rate of employment injuries benefits. Both of those are in accordance with the requirements of the directive which require the benefit to be payable for a minimum of 14 weeks and at least at the rate of which employment injuries benefits is payable. It will be necessary for the Government to amend the Social Insurance Regulations in order to give such a person credit for her contributions during those 14 weeks so that her contribution records for pension purposes is not lost. One innovation is that there is now inserted a qualifying period. If hon Members would turn to the third page of the newly circulated annotated Bill, hon Members will see that under the heading "Maternity Allowance" in the proposed new section 11(a)(i) the first qualification is "that she has on or after the 5th July 1999 paid contributions as an employed person under this Ordinance for at least 26 weeks in the 52 week period ending in the 15th week before the expected week of confinement." Mr Speaker, the purpose of this is pretty clear, that women who are already pregnant should not seek and obtain employment knowing that they are about to become entitled to this benefit and for that purpose. Therefore, there is this qualifying period which exists in the United Kingdom and in most other European Union Member States and also is permitted under the terms of the directive.

Mr Speaker, the Bill provides that where a person is employed under a Contract of Employment, that entitles her to maternity pay and there are some employers in Gibraltar that have such terms of employment, the Bill provides that the employer may deduct from the amount payable to the employee under the contract any sum that the employee is entitled to from the Government. The obvious reason for that is that there should be no duplication of payments, no windfall, no receipt of double payments, one falling from the Government and the other from the employer. The other conditions are that there is a time limit. Hon Members will see that one is only entitled to maternity pay if one has exercised one's statutory rights to maternity leave. One cannot stay at work and claim maternity pay. Maternity pay is something that one gets if one has exercised one's statutory rights to maternity leave and there is a time limitation for claiming the maternity allowance which is six months and there is also requirement to comply with the provisions of the Employment (Maternity and Health and Safety) Regulations 1996 which involve notifying the Director of Employment of those matters.

Mr Speaker, again there is this section substituting the "Minister" for the "Governor" in all instances where that word appears. There is a section dealing with continuity of law.

I have taken hon Members through all the provisions of the Bill. I seem to recall that I have also mentioned to the hon Members that it is the Government's intention to amend the Contribution Regulations so that there is a credit given for the contributions which do not have to be made during this 14 week period. These provisions have the effect of implementing the measures that the Government announced at the time of the Budget. At that time I said that the Government were considering the introduction of a qualifying period and as I have explained to the hon Members today this Bill now contains those provisions for a qualifying period. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON J L BALDACHINO:

Referring to the new circulated amendments, 11(a), it is now being omitted where the person was entitled to maternity pay under a Contract of Employment and she has not exercised the right, that has been deleted and a new paragraph (a) qualifying period inserted as the Chief Minister has explained but on the maternity rights there is no qualifying period, is there? What happens in that case because even though before the person could make the decision where she could give up her right that the employer had to pay her and take it from social security or maternity allowance and therefore obviously she would not be paid twice, in this case since the right to exercise has been removed on this and the qualifying period has been put, what happens? Under the existing maternity rights that provision does not exist. The person had to be paid maternity leave for the time that she had been in employment. Is that not correct?

HON CHIEF MINISTER:

Mr Speaker, we have not deprived anybody of any rights because this leaves entirely in place people's contractual rights. If there is a Contract of Employment which gives more rights than this they remain intact. All this says is the Government will pay the first 14 weeks of maternity pay at the statutory rate so somebody could have a Contract of Employment for maternity pay to be payable for a longer period than 14 weeks or payable at a higher rate than the statutory rate. All that this says is that such a person the employer may then deduct the qualification period has nothing to do with the amendment that has now been introduced.

HON J L BALDACHINO:

Maybe I have not explained myself correctly. What I have said is as the existing right stands, in the Employment (Maternity and Health and Safety) Regulations somebody who was employed and was for six months in employment or three weeks in employment and she became pregnant there was not a qualification period. What I am saying is the Government will not

have the obligation to pay the person the entitlement under the maternity allowance but she will still keep the right that the employer has to pay her even though she will not be able to claim under the new allowance.

HON CHIEF MINISTER:

I now understand what the hon Member is saying. There are transitional provisions which if the hon Member combines the commencement dates and the transitional periods I think he will find that as a matter of biological inevitability it leaves nobody uncovered. That is the whole purpose of the transitional provisions which the hon Member will find under the admittedly somewhat unusual heading of Continuity of Law as Clause 4 of the Bill. At the moment there is no qualifying provision, so that in the introduction of this we should not be disentitling whoever might be in the pipeline at the moment, so to speak.

HON J L BALDACHINO:

What I am saying is, in the case of the new maternity allowance before the House, they have now put in a provision of a qualifying period that the person has to have before payment is made. Under the existing maternity rights under the Employment (Maternity and Health and Safety) Regulations no such qualification exists. Is that correct?

HON CHIEF MINISTER:

Absolutely.

HON J L BALDACHINO:

So therefore what I am asking is, does the employer under this Bill have the obligation to pay?

HON CHIEF MINISTER:

The answer to that is no. I thought the hon Member was talking about buns that were in the oven, so to speak, during the transition period. These people are saved but it is absolutely right. Whereas before there was a regime that gave people the maternity pay rights without a qualifying period, that has been changed. There is now a requirement for a qualifying period and it is not as if the old regime, whereby the employer was obliged to pay without qualifying period, survives. It does not survive and therefore there is now a requirement for a qualifying period before one is entitled, regardless of who pays for it, before one is entitled to statutory maternity pay, but if one has a Contract of Employment that is not so qualified that is another matter, it is statutory pay.

HON J L BALDACHINO:

The other point I would like to bring up, Mr Speaker, is under the new section (a) where the provisions before were that the employer had to be informed here it says "she has where relevant complied with the duty to inform the Director under Regulations 4, 6, 7, 8 and 14 of the Employment (Maternity and Health Safety) Regulations 1996." In those sections what it states is that one has to inform the employer, it does not mention the Director at all. Is that consistent? Should not the other side be amended? If the employer is no longer making the payments....

HON CHIEF MINISTER:

The hon Member is absolutely right. There are consequential amendments to regulations which will follow from this which will reflect that fact, that the notification will have to be to the Director. The hon Member is entirely correct.

HON J J BOSSANO:

Mr Speaker, we do not agree with the change that the Government intend to make to the Regulations but which in fact is not in this Ordinance and therefore although I am speaking to the general principles it is because as I read the Ordinance it does not do what the Government say it does. It is laying down the contribution conditions that are required in order to claim the benefit from the Social Insurance Fund. It is certainly not consequential that the Regulations have got to be changed. It appears to be the policy of the Government that what is being done in order to entitle somebody to claim from the Fund should be extended to curtailing an entitlement against the employer which exists prior to this. Certainly, the employee is not going to be any better off because the employee now is going to be able to claim from the Fund what she was previously able to claim from an employer before except that there was no restriction on her right to do so and a restriction is going now to be introduced in the Regulations although the Bill before the House does not say that. It certainly is not consequential because the Bill before the House appears to give the person the option to claim maternity allowance from the Social Insurance Fund. The original one said she is entitled to claim maternity pay under her Contract of Employment and she has not exercised that right. We have been told that the right people may have under Contracts of Employment are not changed. Presumably she will still have the right to claim from the Fund if she has not claimed from the employer. That, surely, has not been changed in the amendments that have been circulated.

HON CHIEF MINISTER:

Mr Speaker, the Fund is always liable to her regardless of her position with the employer, that is, a statutory right to 14 weeks payment of maternity pay from the Fund. The hon Member is absolutely right. He ought not to lose sight of the fact that these were Budget measures aimed and designed to benefit the employer, in other words, to transfer to the Government the burden and cost of the 14 weeks statutory maternity pay which

uniquely in Europe the hon Members when they transposed this Directive had imposed on the employer. There are other things in this legislation which benefit the employee, for example the fact that she does not have to make her contribution, that she now gets her pay gross without deduction of Social Insurance contribution which she is no longer required to make during the 14 weeks of maternity pay. There are benefits to the employee in these measures but the principal financial thing of transferring the cost burden from the employer to the Government was a measure designed to benefit the employer and yes, the hon Member is absolutely right, it is a matter of policy. The Government have decided that neither the Government nor indeed employers should be exposed to having to pay maternity leave to people except in certain circumstances and in that respect we are simply falling into line with the rest of Europe because otherwise it is a situation in which people enter the labour market, perhaps knowing that they are pregnant, simply in order to obtain this benefit and it is something from which we believe employers should be protected. The hon Member is right. When we change the Regulation the effect of that will, indeed, be that.... I thought this is the point which his Colleague was making, which I conceded to the Hon Mr Baldachino, yes, we are disentitling to the extent that we are adding additional conditions to the entitlement to obtain these payments and whereas before one could get from one's employer 14 weeks even without the qualifying period, now there is a qualifying period both for obtaining this payment from the Government and, if one was not able to obtain it from the Government, also from the employer, there is a qualifying period as well. That will be introduced, as the hon Member quite rightly says, by an amendment to the Employment (Maternity and Health and Safety) Regulations 1996 by which the hon Members originally transposed the Maternity directive.

HON J J BOSSANO:

Mr Speaker, what I am saying is, we are not in agreement with that change but, of course, that change is not being voted here because it is not in the Bill. The Chief Minister has said four times

that he is transferring to the Government the burden of paying when in fact he is transferring it to the Social Insurance Fund which is paid for by employers and employees and which does not receive a Government contribution. They have got more women in their employment than anybody else and therefore probably a higher level of pregnancies.

HON CHIEF MINISTER:

Except that at the moment the employers are paying both. Both the contribution to that Fund and also the maternity payments.

HON J J BOSSANO:

I am not disputing. I am talking on the general principles of the Bill. I am not disputing the fact that it is a benefit to the employer but it is a benefit to the employer not as a result of the Government shouldering the burden or not as a result of the fact that the Government will now pay but as a result that the obligation on the part of the employer to pay maternity allowance to pregnant women who take maternity leave, the Social Insurance Fund will now create a new benefit. That new benefit, if it is not going to be met by a Government contribution to the Fund, logically must be a cost to the Fund which falls equally on employees and on employers in funding that benefit. That is obvious. It may suit the Government to say "we are now going to pay for it out of General Revenue" but that is not what is being done. We are not against it being done out of the Social Insurance Fund and if the Social Insurance Fund has got the money to do it then that is fine but let us be clear that as far as we are concerned what is being done is to transfer the obligation to the Social Insurance Fund from the employer.

As the Bill stood unless it is being changed by the amendments that have been circulated the impression created was that the right to the allowance from the Social Insurance Fund which was subject to the 26 weeks and I can understand that there can be some logic to having to have a contribution record to claim a benefit simply because there are no benefits at all without any

contribution records. I think it is only in the case of industrial injury that one actually acquires the benefit as soon as one starts work because one can be unfortunate enough to have an accident in the first minute of work. Other than that, all other benefits have got contribution records and, frankly, when I saw the 26 weeks it occurred to me that this was simply being consistent in terms of having a contribution record requirement for this particular benefit like there is for every other benefit. The impression that I got initially from the Bill was that for people with less than the 26 weeks contribution period their right under the existing Regulations, were not extinguished because there is nothing in the Bill or in the Explanatory Memorandum to say that it will be. It is only now that has been stated in the House that this is going to happen and it is purely as a matter of policy and frankly there cannot be all that many cases. I think it is difficult to imagine that women are going to rush off to get a job as soon as they find they are pregnant because they are going to collect £36 a week.

In addition, the way that the provisions on maternity allowance in the new section 11(a) were put suggested that the employee had the choice of either claiming the allowance or collecting it from the employer and that it was the conditions on the six months and the conditions on the 26 weeks only applied in the context of the Social Insurance Ordinance because again if one claims one's pension one has six months in which to claim it. It seems to me that the logic of these things were related to the structure of social insurance benefits. I do not see the necessity to do away with what is there in order to do this. It seems to me that there is no reason why we cannot do this and still leave the alternative provisions which are beneficial to some people there for those people who fall short of this one. Somebody can have a situation where they have been employed 25 weeks instead of 26. The moment one starts putting conditions then of course for one week or for a few days there can be somebody suddenly losing the benefit. Instead of losing it totally they could lose it in respect of the Fund because they have not contributed long enough to the Fund and still be able to claim it of the employer if we left it in the Regulations. Our view would be that that is what should be done. The other thing is of course that in terms of the crediting of

contributions which is important because otherwise people will have a gap in their contribution records, as we understand the present Regulations although the 12 weeks in which credit is provided are related to the period of confinement, it seems logical that the leave will be taken in that period. It is quite possible that somebody will decide to have the baby at work and then after it is all over go on maternity leave.

HON CHIEF MINISTER:

She can have it in a weekend and then go on leave.

HON J J BOSSANO:

Yes, but even if they have it in a weekend they will still be able to take the six succeeding weeks as the law stands at the moment and one would expect that as a matter of normal behaviour that it is in the period immediately before and immediately after the birth that the women are most in need to be able to be at home or not having to go to work. The fact that in the new provisions they are going to get 14 weeks it seems to me almost inevitably to be 14 weeks which will overlap with the 12 weeks that are there now. This is not 14 weeks in addition to the 12 weeks. I think it is misleading to suggest that before they were having to pay for 14 weeks and now they are not having to pay for 14 weeks. Before they got credit for 12 weeks and now they are going to get credit for 14 weeks which is two weeks more and we are in favour of the move but it is two weeks more and not 14 weeks more. It seems obvious that in the provision on the credit which goes back to 1984 ought to have been brought up from 12 to 14 when in 1996 the 14 weeks maternity leave entitlement was introduced because it does not make sense that it should say in one law 12 weeks and in another law 14 weeks. It is the right thing to do to match the two. Clearly if rather than saying six weeks before and six weeks after the law is going to provide that they can take the 14 week credit any time they want then, fine, because they will still have the same monetary value in the Fund but I would have thought that the maternity leave is most likely to be within that preceding and after period of the birth taking place and that

consequently what we are doing is extending it most likely by one week on either end. We are supporting, as my Colleague has said, the Bill because the logic of the change was to help reduce the cost of businesses and I think it is something that we did not do but we are prepared to support the Government doing it but we would like to retain the benefits of the present Regulations for those people who fail to meet the criteria that is required for the benefit although we can see the logic of applying it when it comes to an entitlement to benefit because it is standard in the rest of the Insurance Ordinance.

HON CHIEF MINISTER:

Mr Speaker, the hon Member is mistaken in the last points that he has made. I do not know whether the purpose of that dissertation was to suggest that really all that we are doing is improving a current 12 week credit by two weeks. If the hon Member believes that the law presently provides in respect of pension credit that one gets a credit for 12 weeks albeit during the six weeks before and the six weeks after which is the basis of it that what he has tried to do is to suggest since the law already says that one gets it for the six weeks before confinement, for the week of confinement and for six weeks after and that is actually 13 not 12, and that all that we are doing is giving it for 14, he said we were just giving it for two extra weeks. If he was right we would only be giving it for one extra week, since 14 minus 13 is one. But he is wrong because what the hon Member said before, the Hon Mr Baldachino, may be right in respect of Employment Injuries Benefit but is not right in respect of the pension contribution because pensions are no longer paid under the Social Insurance Ordinance. They are now paid under the new Open and Close Schemes Ordinances and the new Open Scheme Ordinance does not contain those credit provisions.

HON J J BOSSANO:

Presumably, Mr Speaker, because somebody overlooked introducing it when it was re-introduced. When the new Open and new Closed Schemes were brought to the House by the present

Government they were brought to the House on the basis that we were re-introducing everything that had been abolished when the Fund was terminated. We took it for granted that they had introduced everything including this.

HON CHIEF MINISTER:

The reason why we did not do it was because by that stage the contribution allocation had been such that the whole of the Pension contribution was paid by the employer. Therefore there were no circumstances in which credits were made for. The hon Member will recall that over the years the allocation of the Fund, by that stage the whole of the contribution to the pension Fund, if one could loosely call it that, was made by the employer. Therefore there was no contribution by the employee from which to give him credits. For that reason we could still have put it in case some future Government had wanted to re-allocate the stamps in a different way but that is the reason why it was not put in. Therefore it remains the fact that as we speak the law as to pension contributions in the Social Insurance Fund does not provide for credits in maternity circumstances and therefore what we are now doing does give 14 weeks where zero weeks exists at the moment.

Mr Speaker, the hon Member asks the Government to leave the non-contributory period as it exists. There is no other territory of the European Community that imposes a right to maternity pay whether it be on the employer or on some Government fund which does not have a contribution record requirement. In the whole of the Community, I think I am right in saying from our research, maternity pay is payable by the Government, albeit that in some countries like the United Kingdom, for example, the employer acts as a paying agent on a full recovery from the Government basis. But all maternity payment schemes in Europe are on the basis of a pre-qualifying employment record period and what the hon Members did and what they are asking us now to preserve is the situation which nobody else in Europe has thought it sensible to do. Of course it is a matter of judgement how prone the Fund could be to that sort of abuse. The hon Member thinks

not very much. Obviously everybody else in Europe, including those Socialist Governments that did it in those other countries took a different view. We have taken a different view. We believe that maternity pay is something which is intended to benefit people who are at work and who become pregnant, not people who become pregnant before they go to work. It is just a question of who are we trying to help here? I believe that what we are trying to help is the woman who is genuinely at work and who, after she is at work, becomes pregnant and I do not see why we should be allowing loopholes that benefit a class of person other than that. I now understand the first point that the hon Member made. He was trying to, lest the Government should appear unduly generous, trying to draw the distinction between the Pension Fund and the Short Term Benefits Fund on the Government. In common parlance people regard the Government as meaning public funds and the Short Term Benefits Fund is the Government. People do not think it is somebody other than the Government that pays unemployment benefit or pays for their health service. When people go to avail themselves of the Group Practice Medical Scheme they say "this is something that the Government is giving them". They do not say "no, no, that is not the Government, that is me and my employer because it is through our contributions to the Fund that it is funded". Pensioners think that it is the Government that is paying them their pension and they do not say "no, no, this is not the Government paying me the pension because this is from a Fund to which I and my employer had been contributing". I am just being reminded that on that basis the Government pay for nothing since nothing that the Government pay for comes out of the pockets of the Ministers, it all comes from revenue that the Government collects from the taxpayer in one capacity or another. I am not sure why the hon Member felt that that distinction was so important but if all that he was trying to say as I now believe that that is what he was trying to say, that when I was saying "the Government pay this, the Government pay that" I might have been giving the impression that this was the Government out of the Consolidated Fund as opposed to the Government out of the Special Fund. They are both public funds. The fact that one comes from import duty and income tax and the other comes from

Social Insurance contributions I do not think is a sufficient distinction. They are public funds. They are funds available to the Government and which the Government have chosen to make payments out of which it was not until these amendments statutorily oblige them to do. If the hon Member was simply trying to highlight the distinction between the Short Term Benefits Fund and the Consolidated Fund, of course I understand and accept that there is that distinction.

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 MEDICAL (GROUP PRACTICE SCHEME) ORDINANCE (AMENDMENT) ORDINANCE 1999

HON CHIEF MINISTER:

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

Question put. Agreed to.

SECOND MEETING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill delivers what we have just delivered consequent upon our Budget commitment in respect of employment injuries and pensions. It now delivers that in respect of the Group Practice Medical Scheme Contribution part of the

Social Insurance stamps. Hon Members will recognise that it is in identical language to the Employment Injuries Bill. Hon Members know that the Group Practice Medical Scheme is established on the basis that contributions are required before one is entitled to access the service. This provides for an exemption in favour of women who are exercising their right to maternity leave to make those contributions under the Group Practice Medical Scheme Ordinance. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON MISS M I MONTEGRIFFO:

We are in favour of this Bill. We do not really find that there is a lot of controversy with it but we would simply like to ask the Minister whether in respect of the element of the credit, are the Government going to make a contribution to the Health Authority?

HON CHIEF MINISTER:

The hon Member asks a delicate question. I would urge her not to press me too hard in case we reveal weaknesses that have existed in this system for some time and which ought to be corrected. Hon Members know that the Scheme is presently established on the basis that without contribution one is not entitled to access the health service and that in respect to the old age pensioners and others that has been addressed by making a contribution from the Social Assistance Fund. The Government anticipate dealing with this in the same way but there may be others in respect of whom the same rule applies which having been dealt with in that way in the past over many years and we would not wish to highlight that, suffice it to say that we will deal with it in the same way as the other non-contributing but medically entitled persons in Gibraltar.

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 SOCIAL SECURITY (OPEN LONG-TERM BENEFITS SCHEME) ORDINANCE 1997 (AMENDMENT) ORDINANCE 1999

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Social Security (Open Long-Term Benefits Scheme) Ordinance 1997, 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 achieves in respect of the exemption from Social Insurance contribution the pensions part of the Social Insurance contributions. We have already dealt with Employment Injuries and Group Practice Medical Scheme. This Bill now amends the Social Security (Open Long-Term Benefits Scheme) Ordinance 1997 which is the Ordinance under which pensions are paid to persons who are currently in employment, amended in the same language as we have done the GPMS Ordinance and the Employment Injuries Ordinance in exactly the same language in respect of Exemption of Contributions in respect of the pension portion of the stamps. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON J J BOSSANO:

Mr Speaker, this is in fact the one where the bulk of the contribution is made by the employer. What we are talking about, I think, is that there was a £1 contribution by employees introduced not so long ago. Is that correct? The point I am raising is in relation to the statement that was made earlier that although there was a 13 week or 12 week requirement in other sections of the Social Security package, in respect of the pensions one there was not because it had been historically paid by employers in the period when the whole Fund was in suspension because of the Spanish pensions problem and we had the whole of the contribution to the Pension Fund made by the employer and the employee was making a much bigger contribution to other Funds. Am I correct in thinking that at the moment when we are talking about this that there is a £1 contribution which was introduced two years ago?

HON CHIEF MINISTER:

The hon Member is right in saying that there is now a £1 contribution. The pension contribution in the stamp is currently £12 of which £11 is paid out of the employer's contribution and £1 from the employee's contribution. But of course the hon Member should not therefore assume that this amendment is necessary only to save the employee's £1 contribution because of course this section also exempts the employer from his contribution. Otherwise, it would be an offence for the employer not to continue making his contribution in respect of a person absent from work on maternity pay. In this case it exempts both, the employee from her £1 and the employer from their £11 contribution.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

THE PUBLIC FINANCE (CONTROL AND AUDIT) (AMENDMENT) ORDINANCE 1999

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Public Finance (Control and Audit) Ordinance, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, hon Members will be aware, given that it occurred during the time that they were in office, that Government officers who left the service between 1989 and 1995 to take up appointment with Joint Venture Companies or certain private companies, were offered three options to enable them to preserve their accumulated pension rights. Options 1 and 2 offered to both industrial and non-industrial employees provided for the payment of a gratuity under the Pensions Ordinance as if the officers had resigned from the Service. Additionally, accumulated pension rights transfer values were paid into the Gibraltar Provident Trust Fund Account in the Gibraltar Savings Bank for the eventual payment of a pension or the purchase of an annuity on the retirement of the officer from the company. Under Option 3, which applied to non-industrial employees only, no gratuity was paid but the officer's pension rights on transfer were calculated on a similar basis to that provided under the Pensions Ordinance. The accrued pension rights value is index linked to the Retail

Prices Index until payment of a gratuity and pension is made on the retirement of the officer from the company.

Mr Speaker, there are currently five former Government officers who have retired from their respective company, that is, three from Gibraltar Nynex Communications Limited and one each from Lyonnaise des Eaux (Gibraltar) Limited and Land Property Services Limited. These pensioners are already in receipt of their pension entitlements under the Option 3 arrangements. Payments of these pensions as well as their gratuities have been channelled through an Advance Account until provision under the law is made to charge the Consolidated Fund. There are 27 former Government officers who have also opted for Option 3 and still in employment and will become entitled to a pension under these arrangements. Eleven of those are with LPS, nine are with Gibraltar Nynex and six of those are with Lyonnaise des Eaux. The amendment to the Public Finance (Control and Audit) Ordinance which we are now considering provides for payments under Option 3 to be made statutorily payable from the Consolidated Fund as Consolidated Fund charges. Option 3 payments are not payable under the Pensions Ordinance.

In summary, what we have is a situation where the Government negotiated certain pension rights with employees who agreed to transfer to companies but the Pensions Ordinance does not allow for their pensions to be paid in the circumstances in which they were transferred out of the public service. Those arrangements were made for those pensions either by amendment to the Pensions Ordinance or otherwise by charging that liability to some other public revenue. Five pensioners have now retired and because there is no Fund that is charged with these payments and they cannot be charged under the Pensions Ordinance to the Consolidated Fund under the provisions of the Pensions Ordinance because the Option 3 terms would not qualify some of these recipients for the payment of these pensions, it has become necessary to find a home to charge these pensions to and the Government have opted to, rather than amend the Pensions Ordinance to make them a statutory Consolidated Fund charge

and therefore eliminate the advance account arrangements which have been in operation until now.

Mr Speaker, additionally, five of these former Government employees were allowed to opt for Option 3 without having completed ten years of pensionable service which is the minimum period of pensionable service required to qualify for a pension on retirement under Regulation 4(1) and 4(3) of the Pensions Regulations. The amendment to Section 6(ii)(c) therefore allows for the freezing of pension rights under Option 3 in relation to former officers who have completed less than ten years of pensionable service at the time of resignation. Mr Speaker, I think hon Members will agree that this is just a question of making accounting financial provision for a situation that we had inherited. The Bill and the need to bring it is not intended to aim criticism at the previous administration but simply to make statutory provision for the payment of these pensions given that the existing Pensions Ordinance does not accommodate circumstances in the particular terms that were negotiated at the time in respect of Option 3. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON J J BOSSANO:

On the general principles of the Bill no explanation has been given as to why the 1st September 1991, the Government say that this applies to people who left the Government service on voluntary transfer to one of the three entities that have been mentioned between 1989 and 1995. What happens to those who left between 1989 and 1991 if this is backdated to 1991? I am assuming the need to backdate it is that it needs to be deemed to have been in place when they left, I take it? Or when?

HON CHIEF MINISTER:

When they started to accrue entitlements on those terms.

HON J J BOSSANO:

So we are talking about who? About people who have been retired since 1989?

HON CHIEF MINISTER:

The hon Member may be right, I do not know when those five officers retired. However, there are no cases pre-September 1991.

HON J J BOSSANO:

So nobody left before 1991, I would certainly have been very surprised if somebody had been paid from an Advance Account from 1991 without asking for something to be done about it. Mr Speaker, the only other thing is, would it not have been better now that the action has been taken to make provision. The fact that the Pensions Ordinance was not amended to make it a direct charge on the Consolidated Fund which is what the Pensions Ordinance does, it means, of course, that in the absence of that instead of an Advance Account it would have been included as a charge in the annual Estimates of Expenditure from the Consolidated Fund and voted each year like we vote the wages of people who get paid instead of it being charged to an Advance Account. Given the fact that what is being done is to make a provision so that those that have already retired and the 27 people that have exercised this option will be able to automatically get paid out of the Consolidated Fund when they retire if it had been done in the Pension Fund then presumably it would have made it possible if there are any other groups in future that want to go down this route to be able to do it because otherwise the problem will recur if in future for example if the Government were in some of the Agencies setting up to offer people the opportunity if they wanted to move out of the Government and into an entity which was a quasi-Government situation or a commercial situation and preserve the pension rights they had earned whilst they were in Government which is really what this was doing. Clearly, if people who had less than 10 years service stood to

lose their 10 years in Government by moving to Nynex or Lyonnaise, the answer is they would not have moved. It is as simple as that. What this was trying to do was create an avenue for movement in which people retained what they had already earned in their years in the civil service. Do the Government not think it is a good idea if by making that proviso in the Ordinance that provides for the pensions then it would not be confined to the people who have exercised their right already? Does this provision open the possibility for the future as well as for the past?

HON CHIEF MINISTER:

Precisely, the answer is yes to his last question. We have chosen to do it in that way because amending the Pensions Ordinance in the way that the hon Member suggests is more than just an amendment. It is a radical alteration of the underlying philosophy that the Pension Ordinance is an Ordinance that provides pensions for people who are public servants. To extend the Ordinance to people who are not public servants, because these are not secondees, these are transferees, requires one to philosophically break that barrier and abandon the principle and the philosophy that the Pensions Ordinance is about the pensions of public servants. This is perhaps a more flexible way to do it because of course pensions under this Ordinance can be completely on any terms that the Government might wish to negotiate whether under the Pensions Ordinance the hon Member knows the law sets out the qualifying period. This is more flexible without interfering with the ring-fenced arrangements that apply only to public servants. Just for the hon Members' information, the payments were paid in 1997 from the Advance Account.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move the adjournment of the House to Monday 11th October 1999, at 3.00 pm.

Question put. Agreed to.

The adjournment of the House was taken at 7.00 pm on Friday 8th October 1999.

MONDAY 11TH OCTOBER 1999

The House resumed at 3.05 pm.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC – Chief Minister
The Hon P C Montegriffo – Minister for Trade and Industry
The Hon Dr B A Linares – Minister for Education, Training,
Culture and Youth
The Hon Lt-Col E M Britto OBE, ED – Minister for Government
Services and Sport
The Hon J J Holliday – Minister for Tourism and Transport
The Hon H A Corby – Minister for Social Affairs

The Hon J J Netto – Minister for Employment and Buildings and Works

The Hon K Azopardi – Minister for the Environment and Health

The Hon R R Rhoda – Attorney-General

OPPOSITION:

The Hon J J Bossano – Leader of the Opposition

The Hon J L Baldachino

The Hon Miss M I Montegriffo

The Hon A J Isola

The Hon J J Gabay

The Hon J C Perez

The Hon Dr J J Garcia

ABSENT:

The Hon T J Bristow – Financial and Development Secretary

IN ATTENDANCE:

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

BILLS

FIRST AND SECOND READINGS

THE GIBRALTARIAN STATUS (AMENDMENT) ORDINANCE 1999

HON CHIEF MINISTER:

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

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. The primary object of the Bill is to amend the Gibraltarian Status Ordinance so that in all those places where it limits the grant of succession and other rights to the male line of descent that is amended so that it is gender neuter and therefore the effect of that is to eliminate the historical position, to reverse the historical position whereby Gibraltarian status derives from male and not from female descent. The Bill also eliminates the advisory committee that has existed hitherto under the Gibraltarian Status Ordinance and I should say pursuant to the first objective that it also deletes sections which become redundant as a result of the elimination of the neuter of descent. So a whole series of sections that related to the illegitimate children those go by the board now because now if one's mother is Gibraltarian it matters not whether one is legitimate or illegitimate. The section also eliminates the advisory committee that used to advise on discretionary award of Gibraltarian status. Most of the discretionary categories again have been eliminated. There remain two and in any event those decisions have, under the practice for many years, been made by the administration, that is to say, by officials and not on the advice of an advisory committee which has not really functioned for many decades and really the elimination of the advisory committee does little more than eliminate a body which has fallen into disuse anyway. The third function is that it replaces the Minister with responsibility for personal status which is the Chief Minister for the Governor.

Mr Speaker, in our Election Manifesto we had a commitment to review the Gibraltarian Status Ordinance in this respect. We have considered and consulted as to the reason why the Ordinance was drafted in this way originally. We have not been persuaded that any of those reasons, even if they responded to sociological patterns at the time, firstly that those sociological patterns are no longer the case and, secondly, that with the sociological changes that have occurred in society in the last 30 plus years, that it really

is no longer acceptable for Gibraltar women and their offspring to be discriminated in this respect and that there is no longer a place for this sort of discrimination on our Statute Book.

There are a number of consequential changes, as I have said. None of them, I believe, raise important issues of principle. The one that I have to point out to the hon Members is that the phrase "British National" is now used instead of the phrase "British Subject" and that is because of the difference in significance that the phrase "British Subject" has now obtained in changes under the British Nationality Act since that phrase was first used in the Gibraltar Status Ordinance. I hope that we shall be able to pass this legislation with consensus in this House. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON J J BOSSANO:

Mr Speaker, we will be supporting the Bill and we agree with the general principles. I am not sure that there are matters of detail which we are absolutely clear, particularly the one that has been mentioned about a British National under the present Nationality Act as opposed to the original one which was the 1948 one. I assume the new category of British National Overseas which was given to five million people in Hong Kong.... I take it they are all British Nationals? But I am not sure to what extent. The distinction, as I recall it, in the Nationality Act is between British Citizens and British Dependent Territory Citizens and I am not sure whether British Subject and British Nationals are the same thing.

HON CHIEF MINISTER:

If the hon Member would give way. I was hoping we could have this detailed discussion at Committee Stage but suffice it, I think, to say at this stage that this is the first of a number of qualifications which accrue one on the other. The phrase "British Subject" back in the 1960s meant every category of British so it

was the widest possible. The phrase "British Subject" now means very, very little. I think there is a minor category of persons, British Protected Persons, who are the only ones that now fall into that category. If we use the phrase "British Citizen" which is the modern phrase now, it would be much more limited in scope than the original phrase "British Subject". We are advised that the phrase "British National" encompasses the same group with the exception of these British Protected Persons that used to be covered by the phrase "British Subject" but I will be in a position to give the hon Member a detailed explanation of that when we come to the Committee Stage.

HON J J BOSSANO:

We think that the Advisory Committee was not a bad idea but, of course, as long as it functions, if it is not doing anything, then there is really is no point in keeping it just for the sake of keeping it because it used to be there. I think there is sense in keeping it if it is going to be reactivated. There may be, of course, a lesser role for the Committee given the fact that much of the discretion was used in fact to grant Gibraltar Status to children of Gibraltar women who now get it anyway without having to rely on the discretion. I think that used to be to some extent what the Advisory Committee would normally look at when they had requests.

Mr Speaker, the replacement of the 'Governor' by the 'Minister', we have had in more than one law in Gibraltar the powers of the Governor being incapable of challenge because decisions were taken in absolute discretion. I am not sure whether the same is true in the case of when we have the Minister making it in his absolute discretion or by the Registrar to register any person who satisfies the Minister that he is a British National. If that is the case then I think this is a first time that an Elected Member is being given absolute discretion to do anything. I do not know to what extent, if this is simply that we have now put Minister where there was Governor before and that the Governor had absolute discretion but I do know that there are areas in other laws where there are powers of the Governor which cannot be challenged. I

think, in areas of immigration, it talks about decisions being in the Governor's absolute discretion. I do not think it is something that people any more accept as correct that the Governor should have absolute discretion and I think they are even less likely to accept it of a Minister than they are of the Governor. It is not a major issue. I just wondered whether in fact this is simply, as I said, a deliberate policy thing or something that has happened by virtue of replacement of the Governor by the Minister. In any case it is something that can be looked at when we come to the Committee Stage. We will be voting in favour.

HON CHIEF MINISTER:

Mr Speaker, if I could deal first with the point about the committee. As a result of including the female line of descent which generated most of the discretionary grounds for Gibraltarian Status which was what the committee would have been advising on, as a result of that sort of source of work, there are now only two discretions to be exercised under this Ordinance. One relates to adopted children and the other relates to Gibraltarian Status as a result of 25 years residence. Those are the only two discretionary grounds left from what used to be a much longer list. Point 1, the potential for the exercise of discretion and therefore the potential workload of the advisory committee is now very, very minor compared to what it used to be. The Committee has, in recent decades, been composed almost entirely of civil servants and therefore there seems not to be any great advantage in having a committee of civil servants as opposed to Ministers simply seeking advice from the civil servants in question which I suppose would be the Chief Secretary and the head of the Civil Status and Registration Office. That is the way that it is envisaged. It was only an advisory committee in the first place. It did not bind and I do not envisage that the abolition of the advisory committee will result in any change in practice compared to what it has been during the last few decades which has been really an internal administration advisory function.

As to the judicial challenge point, the hon Member may be interested to know that under the existing section 28, the position

remains as it has always been and that is that there is no appeal but, of course, that does not exclude what is the more usual way of challenging quasi judicial political decisions which is by Judicial Review. It is not possible to exclude the jurisdiction of the Courts in Judicial Review. I do not want to say this without refreshing my memory, but I think we have actually used language to make the position preferable. Under the existing section 28 which is the one dealing with judicial challenge, it says "no report of the Advisory Committee submitted to the Governor under Part 3 and no decision of the Governor under Part 2 shall be subject to Appeal or shall be questioned in any Court". In the Bill before the House that section is deleted altogether. There is now no statutory impediment or attempted impediment because I do not believe that that section was effective anyway in excluding Judicial Review of what is a quasi judicial function even by the Governor. The Governor is not above Judicial Review. The query whether section 28 was effective, if that is what it sought to do, but in any event it has been deleted and the position, therefore, is that there is no question of the right to challenge the exercise of ministerial discretion in the Courts if it has been procedurally improperly exercised.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

May I just add that hon Members will have noticed that I omitted to mention this so that they could follow the effects of the proposed amendments. The amended text of the Bill has been scheduled to the Bill before the House so that they would not have to do their own compilations in order to follow the amendments.

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

THE PUBLIC HEALTH ORDINANCE (AMENDMENT) ORDINANCE

HON CHIEF MINISTER:

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

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill again is a Bill brought to the House to amend an Ordinance in order to enable the implementation of one of the measures that I announced at the time of the Budget in June. It is in terms that I alluded to in my presentation of the Budget in this House and it achieves the desired end. The desired end being to enable premises used for specified activities to be rated at a different poundage than the standard poundage. The hon Members therefore will see that it purports to add a new sub-section (ii) to Schedule 3 of the Public Health Ordinance so that it will provide for a special poundage to apply to hereditaments which are used for a qualifying activity. 'Qualifying activity' is then defined in the Bill in the same terms as I used in my address to the House at the time of the Budget, namely retailing goods, wholesaling goods, construction, manufacturing and repair, not being construction, manufacturing and repair relating to premises used in connection with the production, distribution or sale of electricity, water or telecommunications and also premises used in transport and distribution. We have gone beyond what I announced in the Budget in the sense that the next two lines in effect leaves the door open without the need to come back to the House if the Government wants to increase the list of qualifying activities. After it says the lists A, B, C to D, it then says ".....or such other activity as the Government may from time to time prescribe by notice in the Gazette". Therefore, if the Government

decide that some other sector of the economy needs to be favourably treated for aids purposes, we could extend the list beyond that currently set out in A, B, C and D to that sector and special poundage means 55 pence in the pound on the full net annual value of the hereditament which is the element of reduction that I also announced. Therefore, Mr Speaker, it is to implement a budget announced measure. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON J J BOSSANO:

We will be voting in favour and I think it is sensible if the Government at any time want to extend it to other activities that they should not need to come back to the House and introduce another Bill. Let me say that I do not quite understand how or who is going to be doing the decision. Is it that LPS is going to be given guidelines by somebody else as to what are the premises that qualify and which are not? Or is it a matter that they have to decide? In theory I think it sounds quite straightforward but I would have thought that in practice the Valuation Department that is doing the rates do not necessarily have to know what a particular commercial building is being used for, or if there is a change of use, because they presumably look at the rateable value based on the rent that is paid and not on the use that is made. There is nothing here to indicate how that is arrived at and the fact that this is from the 1st July means that they will now have to go back and look at what people were doing on the 1st July, not what they are doing now. I know there will not be major changes but given what we know of the very high rate of small business start-ups and disappearances in the private sector which is reflected in the very high level of turnover, one could have a place that opens tomorrow and before the first quarter is over the place has closed down and somebody else has opened and doing something else and they qualified the first time round, this is now being backdated to the 1st July. I am not sure that other than the fact that the Bill says what is the proper poundage to be applied to the net annual value, it does not then say anything about how

they get there and I wonder if that has already been all thought out. I imagine part of the delay has been in knowing how to do it so I would have thought that by now they would know how it is going to function. I think it would be useful for that to be explained in the House.

HON CHIEF MINISTER:

There certainly will be teething problems, but we envisage them to be of a slightly different kind to the one the hon Member has speculated. There is actually a categorisation of commercial premises by LPS in their computer. They break down into in fact many more categories than this. They can sub-categorise even retail activities. We do not envisage that the problem will come in LPS knowing what premises are used for because they have them already categorised or if they have not they can categorise them. They are satisfied they can do that. Indeed, they have produced for me a list of activities by which they can categorise and it is a much more detailed list than these four items. The problem does not come with that. The problems may come when properties are used for hybrid purposes. In other words, a property need not only be used for wholesaling goods, they could be a mixed wholesale/retail. Retail premises may also have office accommodation all linked up into one. Workshops may form part of some other part of the operation of the company in question. That is the sort of problems that we expect will arise rather than being able to know what the principal use of its hereditament is. LPS feel that they can make a good initial judgement from their computer records which they have re-written the programmes in order to enable them to do and the bills will go out with the element of reduced poundage in accordance with the judgement of LPS, in accordance with guidelines provided to them. Then we will await reactions from people who have received the quarterly bills, obviously if somebody has received the discount they are not going to complain that they had it but they were not entitled to it, so the complaints will tend to be of people that feel that they are entitled on the basis of my public statement of the reduction and they have not had it.

Then we will have a list which will hopefully just be an initial exercise of businesses that feel that they have been wrongly excluded from the reduced poundage and each of those will then be considered on their merits and at the end of that process all the commercial premises in Gibraltar will have been categorised for this purpose. There is then the need to keep the list up to date. New businesses will then have to be properly rated and, frankly, I do not know whether LPS intends to do that by the same process. In other words, they are just rating them as they think appropriate and waiting for the comeback or whether in the case of new businesses to open from now on, it is their intention to ask for some sort of application in advance. But certainly, what I have explained is the way it is intended to deal with existing businesses and, again, the other point that the hon Member made is facts that may have changed since the 1st July until now. Again we shall have to see how that comes out. If there are difficulties..... I will give way to the hon Member.

HON A ISOLA:

Just one question, Mr Speaker. The Chief Minister said a few moments ago that premises used, for example, warehousing and offices within the same building, the intonation there was that for that purpose the offices would not be included but under the definition it is the activity itself. Am I right therefore in saying that whether it is office, storage or showroom, that it is the same for all of them?

HON CHIEF MINISTER:

Yes, the criteria will be that if one has ancillary facilities but which are ancillary to the principal activity which is retailing, that will be all right, but there are businesses which have substantive activities which straddle various sectors, with a common head office or with a common storage and something like that. It is only when one is in that situation that an apportionment may have to be made. But when one has an activity which is clearly retail or an activity which is clearly wholesaling goods and the activity comprises of a shop front, or a store room and a little office at the

back all that will be regarded as retail. The hybrid factors only come into place where the premises are shared between one type of business that is intended to be covered and another type of business which is not intended to be covered. Then there will be a judgement or an apportionment to be made there.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

THE ROAD TRAFFIC (WINDSCREEN TRANSPARENCY) ORDINANCE 1998 (AMENDMENT) ORDINANCE 1999.

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to amend the Road Traffic (Windscreen Transparency) Ordinance 1998, be read a first time.

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Road Traffic (Windscreen Transparency) Bill aims to achieve two ends. Section 2(1) sets out the basic position, that is, a motor vehicle or trailer registered in Gibraltar needs to comply with the standards set out in the Road Traffic (Windscreen Transparency) Ordinance 1998 in so far as the transparency of windows is concerned and it is an offence if this is not so. Section 2(2) gives the Minister for Transport a

discretionary power to exempt the vehicle from the provisions which have applied up until now in respect of the transparency of windows in motor vehicles provided that the basic principle of the Ordinance is in no way compromised. The basic principle is that the persons inside the vehicle must be easily identifiable from outside of the vehicle through any of its windows. It is intended that this discretionary power will only be used initially in respect of any vehicle which was legal in Gibraltar prior to the enactment of the Ordinance and it contains a window or windows which are only manufactured to a specification which does not comply with the Ordinance. The Government have taken the view that cars which were legally in Gibraltar when the change in the law occurred and which could not have one or more of its offending windows replaced for the simple reason that they are not manufactured to a specification which complies with the law and which in addition do not contravene the basic spirit of the law should be granted an exemption so that their position in Gibraltar is legalised. Obviously a vehicle which requires a MOT test by virtue of its age and which contains windows which narrowly fail to pass the standard provided in the Road Traffic (Windscreen Transparency) Ordinance 1998 can never aspire to obtain an MOT Certificate. This in turn means that the vehicle cannot obtain its road tax disc and it cannot therefore be used. To the best of my knowledge there are only a small number of vehicles in this category and this amendment is intended to correct this problem which has been highlighted to the Government consequent on the introduction of the Ordinance.

A general power of exemption is provided by this section of the Bill rather than just a narrow power simply to correct the issues highlighted by the practical application of the Road Traffic (Windscreen Transparency) Ordinance 1998. In this way, problems which are not foreseen today can be addressed as and when they arise if there is merit through the use of the discretionary powers which will be vested on the Minister with responsibility for transport. If this general power were not present, when future problems arise there would be a need to further amend the Ordinance on each occasion to take account of whatever special circumstances are highlighted which is

laborious. Section 2(3) of the Ordinance is forward-looking. The trend is now for certain makes of vehicles to have a slightly darker tint than the Ordinance allows for the rear windscreen as a safety measure. Government are not prepared to compromise on the principle of the Road Traffic (Windscreen Transparency) Ordinance and so discretion to exempt new makes of cars will be given when these are only manufactured with the window or windows which do not meet the specification of the Ordinance provided that all occupants of the vehicle can readily be identified from outside through any of its windows. The intention of this section is to allow car importers to import into Gibraltar and sell a particular model or models which are only manufactured with a specification of window which narrowly fails to comply with the law. Section 4 of the Bill clarifies that the Minister who is empowered to grant exemptions under the proposed Ordinance is the Minister with the responsibility for Transport. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON J C PEREZ:

Mr Speaker, we support the fact that the Bill releases from their locked garages certain vehicles that were caught up with the legislation and certain vehicles brought in by manufacturers which, whilst keeping to the European Union standard, were, nonetheless, exempted from being able to be driven in Gibraltar because our law went further than the European Union specified. It seems to me that by wanting to go further than the European Union initially we are now having to come back and reversing that extra bit that we wanted to include in our legislation to comply with what is standard in the rest of Europe. What seems to me to be a point that could be a contentious one and could find the Government in legal cases is that although the law says that the window does not serve to prejudice the easy identification of all its occupants, the definition of the absence of what that actually means in law could be open to interpretation and could cause people to go and challenge the law and have the courts decide whether the judgement of the Minister is right in prejudicing the

easy identification of the passengers inside the vehicle or not. It leaves it open to that and it could cause certain legal problems in the future. Other than that we generally support the Bill in that we are aware of several cases, some of which were removed in the last amendment where public service vehicles were caught up in the law, were exempted so that they would be able to be used and now this removes other vehicles caught up in the legislation and we support the Bill but we see there are things that could cause problems of interpretation in the future.

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 this Bill be taken later during this meeting.

THE HEALTH, SAFETY AND WELFARE AT WORK ORDINANCE 1999

HON J J NETTO:

I have the honour to move that a Bill for an Ordinance to make provision for the approval and issue of codes of practice for the purpose of providing practical guidance with respect to the need to secure the health, safety and welfare of persons at work and members of the public, be read a first time.

Question put. Agreed to.

SECOND READING

HON J J NETTO:

I have the honour to move that the Bill be now read a second time. This is a simple, straightforward piece of legislation. It aims at providing practical guidance with respect to the requirement of

the public by empowering the Minister for Employment to (a) approve and issue Codes of Practice as, in his opinion, are suitable for that purpose; (b) approve such Codes of Practice issued or proposed to be issued otherwise than by him as in his opinion are suitable for that purpose. The Minister may not approve a Code of Practice before consulting any Government Department or other body that appears to him to be appropriate. Where the Minister approves a Code of Practice he must issue a notice in writing, (a) identifying the code in question and stating the date on which its approval is to take effect, and (b) specifying for which of the provisions in our legislation a particular Code is approved. The Minister may, from time to time, revise the whole or any part of any Code of Practice or approve any revision or proposed revision of the whole or any part of any approved Code of Practice. It stands to reason that if a Minister wishes to withdraw his approval of any Code of Practice he should consult the same Government Department and other bodies he previously consulted. If the Minister goes ahead with the revocation he has to issue an appropriate notice notifying the cessation of approval. An approved Code of Practice may be used in criminal proceedings but failure by any person to observe an approved Code of Practice shall not, of itself, render himself liable to any civil or criminal proceedings. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON J L BALDACHINO:

Mr Speaker, I do not think that is a simple Bill. I would say that it is a straightforward Bill but in any case we will be voting in favour. The only thing is, could the Minister clarify some points when he has the right of reply. The Code of Practice that will be approved or initiated by the Minister, in this case, I suppose it does not mean that it will be at the whim of the Minister? I suppose that it will carry certain Code of Practice in other countries already in existence, especially the ones in UK. If there are others which might be introduced locally I suppose that under the Bill he will consult professionals in whatever fields there are. If he can clarify

those points at Committee Stage, I would be grateful. The other thing is, I suppose that what the Bill actually tries to achieve is that if there is any accident at work, there is another procedure and guidelines of how certain things should be done at work and therefore it would be easier for the Courts to convict. For example, the one that comes to mind is a fatal accident which today there is no provision. If I am correct, I suppose that that is what the Government intends to achieve by passing this Bill. If that is the intention, let me say to the Minister that we will be voting in favour.

HON J J NETTO:

Just to clarify the point mentioned by the Opposition spokesman, yes, of course, I did say in my speech it was a straightforward piece of legislation. It has basically been lifted from the equivalent Health and Safety at Work Act 1974 in the UK. The only difference is that whilst in the UK it is the Health and Safety Commission actually which issue the Codes of Practice. The difference between UK and Gibraltar is that the Health and Safety Commission is a statutory body in UK, whilst in Gibraltar all that I have at my disposal is the Health and Safety Advisory Council which is not a statutory body. Of course he is right that it will definitely not be at my own whim that I will be issuing Codes of Practice. I have not got the time to issue Codes of Practice. In fact the professionals in the Health and Safety Advisory Council will be the ones prioritising which particular Codes of Practice are the ones that will be coming sooner. The intention behind a Code of Practice is one that whilst the legislation itself under the principal Ordinance or the Regulations may be very complicated vocabulary for employers and trade unions alike, a Code of Practice is intended to simplify that kind of vocabulary and guide employers through the various Codes of Practice to make it easier to raise standards and avoid, of course, accidents at work. That is the intention and I hope that I have clarified that for the Opposition Member.

Question put. Agreed to.

The Bill was read a second time.

HON J J NETTO:

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

THE WORKING TIME ORDINANCE 1999

HON J J NETTO:

I have the honour to move that a Bill for an Ordinance to implement in Gibraltar the provisions of Council Directive 93/104/EC concerning certain aspects of the organisation of working time, be read a first time.

Question put. Agreed to.

SECOND READING

HON J J NETTO:

I have the honour to move that the Bill be now read a second time. The Working Time Directive is a piece of European legislation which the Gibraltar Government are obliged to implement in our statute book. The directive was approved in 1993 as part of the European Commission Social Action Programme. The purpose of the Social Action Programme was to create a social dimension to the Single European Market. It was designed to ensure that workers in all countries of the European Union enjoyed a basic level of employment protection rights on such matters as health and safety at work, information and consultation on redundancies or business transfers and the regulation of working time.

The directive was approved by the European Union Council of Ministers as a health and safety measure. This meant that it was subject to qualified majority voting and could not be vetoed by one

Member State. At the Council meeting the then Conservative British Government abstained when the directive was put to the vote and immediately announced that they would challenge the validity of the directive in the European Court of Justice. Their argument was that working time was not a health and safety measure but created new rights for employees. It therefore should have required unanimity in the Council of Ministers. However, the European Court of Justice rejected this argument and upheld the directive in November 1996. The new UK Government implemented the directive on the 1st October of last year. Why is the directive important? There are two reasons why the directive is of particular importance in Europe. Firstly, there were two countries in Europe, namely Britain and Italy who did not have statutory annual leave entitlement provisions. This meant that millions of workers in those countries were deprived of any statutory or collective agreements providing annual leave. Most of those with no holiday rights at all are part time workers. Second, the phenomenon of excessive working hours has become more widespread in recent years. In Britain alone in 1996 there were 3.9 million people working more than 48 hours a week compared with 2.7 million in 1984 when figures were first collected. There is also a strong argument that the growth of excessive working hours amongst men in particular is having a detrimental effect on family life. A study in the UK found that a quarter of all fathers were working over 50 hours a week and one in 11 were working more than 60 hours a week. As a result, only a minority of fathers working more than 50 hours a week were able to participate in a family meal every day. They rarely went out on shopping expeditions with their families or visited relatives and friends. The lowest level of regulation required by the Working Time Directive would make it easier for these workers to strike a proper balance between their work and family responsibilities. Indeed, the implementation of the directive is an essential element in any practical family, friendly, employment policy. Who will be covered by the legislation? The legislation will apply to every worker over the minimum school leaving age. The definition of a worker covers those with a contract of employment plus a wider group who undertake work under other forms of contract, for example agency and temporary workers, free lancers et cetera but does

not cover self-employed. The legislation will exclude from its code various workers involved in certain activities or sectors of activities. It should be noted, however, that exclusions are subject to review by European Union Council on a proposal from the Commission. It may well be that in the future there will be few, if any, exclusions from the basic principle of a maximum 48 hours week. The limit may also be disapplied by agreement between the worker and his or her employer until the year 2003. This too may change in the future.

What is then the Government's policy approach? The Government consider the directive to be an important addition to health and safety protection for workers. The Government favour maximum flexibility in implementation but do not believe that this should be at the expense of bare minimum standards and proper protection of workers from risk of excessive working leading to stress, fatigue and the risk to health and safety. The directive also forms an important part of the Government project to create a flexible labour market underpinned by minimum standards. The Government's wider policy on promoting family employment will be helped by implementation of the directive. Combining paid work and parenting or caring for dependents is a constant juggling act particularly for women. Being a parent and a worker is not easy and working parents need as much support as possible. The long hours culture has historically not only created barriers to work for women with caring responsibility but has also prevented many men from taking an active role in their children's upbringing. Providing limits on working hours, minimum rest periods at work and an entitlement to paid annual leave will help working parents to spend more time with their children and so, hopefully, balance their home and work commitments more successfully. The Government also recognise that there is a balance to be struck between effective protection and placing unnecessary regulatory burdens on business. The Government's approach to the draft legislation has been to maximise flexibility whenever possible as to the particular arrangements that should apply in the workplace. The Government believe that it is best that employers and workers come to sensible arrangements appropriate to their particular working situation. For this reason the Government have

taken advantage of the derogation provided for in the directive where it believes there is a case for so doing.

Mr Speaker, the Government have provided guidance notes to members of the Labour Advisory Board and the Health and Safety Advisory Council on how the Ordinance will work for the benefit of employers and employees. These are lengthy and detailed and have been praised in the consultation process which we have undertaken before introducing this Bill.

I propose to summarise the main provision of the Bill. The principal provision of the Bill provides a limit on average weekly working time of 48 hours, although an individual can choose to work longer; a limit on night workers average working time to 8 hours; a requirement to offer health assessment to night workers; minimum daily and weekly rest periods; rest breaks at work and paid annual leave. In addition, the Bill implements the provision of the Young Workers Directive which relates to working time. Other parts of the Young Workers Directive will be the subject of separate legislation which will be forthcoming shortly. We thought it best to have all the working term provisions in one place and a separate provision of the Young Workers Directive, which deals with other matters such as the type of employment, kept separate. The Bill provides for workers between 15 and 18 to have certain rights to minimum daily and weekly rest periods which differ slightly from those granted in the Working Time Directive. Clause 1 provides the Title and Commencement. Clause 2 provides the definition including the central one of working time itself. This is defined as any period during which a worker is working at the employer's disposal and carrying out his activity or duty. The question most often asked about this is whether it covers an employee who is on call but not actually working. To some extent, this will depend on circumstances but in general that time would not be considered as working time under the Ordinance. Section 4 provides that the average weekly working time must not exceed 48 hours. This time is averaged out over a period of 17 weeks so that a worker might well work more than 48 hours in one week and less the next week as long as over a 17 week period the average is not more than 48 hours. It should be noted that Part 3

of the Ordinance provides various exceptions to the rules set out in Part 2 so the 48 hour limit does not apply to various categories of people such as junior doctors and those employed in the transport sector and people who are running their own business. Section 4 also provides that the limit will not apply to a worker who has entered into an individual agreement with the employer. Section 5 deals with night work and provides that a night worker's average hours must not exceed eight. It also provides that the worker has a right to a health assessment. Section 6 deals with the general duties of an employer to ensure that the pattern of work includes adequate rest breaks and Section 7 provides that the employer must keep records to show that the limit in relation to working time are being complied with. Sections 8, 9 and 10 deals with the rest breaks. A worker is entitled to rest breaks each day, each week and on each day of work which is more than six hours. The rest breaks might be over lunch or, obviously, over night or a weekend.

The directive provides for a minimum paid annual holiday entitlement of 20 days from the 21st November 1999. That entitlement is already provided for in the Gibraltar law by the Employment (Annual and Public Holidays) Order although Section 11 takes the opportunity to delete the part of that Order which deals with workers working seven days a week since it is no longer possible. Interestingly the requirement is one which caused the UK some difficulties since there was previously no entitlement to paid holiday in the UK law. Section 16 imports part of the International Labour Organisation Convention on the Employment of Young People. This will complete the implementation of that Convention in Gibraltar. Part 3 of the Ordinance deals with the various exceptions to the general rules permitted by the directive and which will be taken advantage of in Gibraltar. As I mentioned before the maximum of 48 hour week does not apply to, for instance, junior doctors. Although the House will know that there is a further directive in the pipeline which will remove this exemption in some 10 years time. The rules about breaks and so on do not apply to work especially where there is a need for continuity of service or production, such as in hospitals or airports or where there is a foreseeable surge of activity such as in the

post at Christmas. Certain exceptions that apply to shift workers by Section 14. Section 15 provides for collective agreements or workforce agreements to modify the application of the rules on breaks and allow, where appropriate, the periods for working out the average number of hours to be extended. Sections 16 and 17 refer to compensatory rest and force majeure in the case of young workers. Part 4 deals with enforcement, offences and remedies. The Factories Inspector will enforce the Ordinance and employers who do not provide for health assessment for night workers and keep proper records are guilty of an offence. A worker who is not granted the right conferred on him by the Ordinance may go to the Industrial Tribunal.

Mr Speaker, as I said in the opening, the directive was the cause of considerable controversy in the United Kingdom. I think its impact here will be rather less because of the, dare I say, more enlightened attitude which already exists in Gibraltar. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON J L BALDACHINO:

I am not going to be as long as the Minister has been in his intervention for the very simple reason that what we are doing here is transposing the directive into our national laws. I will say, just for the record, that this is a directive of the 23rd November 1991 and that all Member States had until 23rd November 1996 to implement into their national laws. There are certain things which the Minister has said and which I would like him to clarify when he has the right of reply. He mentions annual leave and there is nothing in the Ordinance which refers to the annual leave which is stated in the directive which must be four weeks. I presume that we are already well within the directive of annual leave. I also want him to clarify something on annual leave, if public holidays are classified within those periods? I presume that it does but there is nothing in the Ordinance. I have not been able to look at the amendments because of the short period that we have had it, so I do not know what they actually do. The other thing is, Mr

Speaker, that under the Employment Ordinance, I might be reading this wrongly, I understand that a child under our Ordinance is somebody who is of the age of 18 years and under. According to what has been passed today, it is 16 years, so there is already provision in 30(1) of the Employment Ordinance for somebody of 18 years and upwards, is classified as an adult, but 18 years and below is classified as a child, why is this, now it says 16 years and we would like to know if there is a conflict between what we are passing here today and what the Ordinance already says.

Obviously, there is very little else I can say. As I have already stated all that this does is introduce into our laws what the directive tells us to do. The 17 weeks, I presume, is compatible to the maximum which is four months in the Ordinance, it states by month and not by weeks. As I said before we will be voting in favour of this for the reasons I have already given.

HON J J BOSSANO:

Mr Speaker, in relation to the provision in annual leave, the EEC Regulation also says that one cannot be paid for the leave instead of taking it physically. I suppose the argument is that if they were trying to justify, that this had something to do with the health of the workers, then logically if not having four weeks annual leave is prejudicial to one's health, the health would not be improved by getting four weeks pay, presumably. But there is nothing, at least if there is I have not been able to identify it, where it is that it will not be permitted anymore because I know that it has been not uncommon in Gibraltar, certainly not uncommon in the Government, for people to have leave at the end of the year and then instead of taking it in the following year, they have asked to be paid the amount and agreements have been done to pay them. I do not know whether this means that now that will no longer be possible or whether in fact we are saying in the law that it is no longer possible. I notice in the directive where it says the minimum shall be four weeks, also says that unless it is as a result of termination of employment, the leave cannot be paid cash in lieu.

The other thing is of course that I think there are people in Government employment with longer hours and certainly I can think of at least one particular area where there is seven days working, or there used to be seven days working until a few years ago. I do not know whether there are any exemptions to the seven day rule at all. There does not seem to be in the directive any provision for that. I take it that the only area in the Working Time Directive where discretion is permissible is in the 48 hours, that is, it is only in respect of the 48 hours that the worker and the employer can agree to doing longer hours. Let me just say, for the record, that although I accept that the wider policy considerations that have been spelt out are things that people tend to use in other countries and have used in defending the need for this, I do not think that there is any evidence in Gibraltar where people have for years worked very long hours that either their social life or their public life, I mean, we have very strong family life and all my life in the trade union has, as he well knows himself, from his own experience, we have had to spend time trying to persuade members to work less. No one wanted to work less. I think in Gibraltar somehow we seem to have cured the problem without having to cut the hours.

HON J J NETTO:

Firstly on the question of this confusion between annual leave and public holidays. Article 7 of the directive does not make reference to annual leave or public holidays, it makes reference to paid annual leave and when we review what is actually happening throughout various Member States they put the two together. It is annual leave and public holidays, that is why I said in my speech that we over provide in the context of that. That is one of the clarifications.

The other clarification is the question of how far we have gone in terms of the transposition of the Young Workers Directive, the protection of young workers. This Bill is mainly to do with the Working Time Directive. It has gone some way, as I said in my

speech, to cover some of the articles either in the European Directive or because the ILO.....

HON J L BALDACHINO:

That is not what I was saying during my contribution. What I am saying is that under the Bill before the House a young person is referred to 16 years or under. According to our laws a young person is 18 years or under. Under 30(1) of the Employment Ordinance, it refers to young people as 18 years or under. Will there be a conflict between what we are passing here and what the Employment Ordinance says? Obviously to me considering somebody of less than 18 years is superior in protection to considering somebody of 16 years or less.

HON J J NETTO:

I am not a lawyer but I would dare say that if the current Employment Ordinance is providing less than what the directive intends to do, then obviously the Employment Ordinance will have to be amended in the light of the spirit of the directive.

HON J L BALDACHINO:

What I am saying is that we are now protecting more than what we intend to protect. That is permissible under the directive. What we cannot do is under-protect, we can over-protect. What I am saying is that at this stage we are protecting more a youngster than what we are actually doing here. There is a conflict between one and the other. We are much better off now actually than what we are trying to legislate. That is what I am saying.

HON J J NETTO:

Yes, Mr Speaker, we are informed that we are over providing. It does allow within the directive but it has not been done only because of that. As I said before it has been done because of that and to comply with the Convention of the ILO as well.

HON J J BOSSANO:

The point that my hon Colleague is making is that the law says "one cannot employ a young person in dangerous employment" and a young person is 18 years old, without the change. If we have got a law that says employment in dangerous industry no person under the age of 16 shall be admitted to any employment which is by its nature dangerous, then it means that in this one one can employ somebody who is 17, but in the existing one one cannot employ somebody who is 17. The point that we are making is, this seems to be the new provision whether it complies with the ILO or whatever it complies with, this seems to be less demanding than what is in the Ordinance already, I think the figures given by the Minister for Education of the number of people remaining at school who were under 16 that we are talking about very few people under the age of 16. It is rather peculiar to say "look, once you have your 16th birthday it does not matter if you get a job in a place which is dangerous to your life, your health or your morals, as long as you have had your 16th birthday".

HON J J NETTO:

Mr Speaker, if there were to be any inconsistencies they would have to be checked before the Committee Stage and we will have to see whether it gets amended or not.

Question put. Agreed to.

The Bill was read a second time.

HON J J NETTO:

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

THE MEDICAL AND HEALTH (AMENDMENT) ORDINANCE 1999

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 1999/46/EEC, be read a first time.

Question put. Agreed to.

SECOND READING

HON K AZOPARDI:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this is a very short Bill. The purpose of it is to transpose the requirements in the directive by adding to the list of specialisations scheduled to the Ordinance in the manner set out in the directive. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON MISS M I MONTEGRIFFO:

Mr Speaker, that was a very short and sweet contribution. The contribution is one that is non-controversial and therefore we will be voting in favour.

HON K AZOPARDI:

Mr Speaker, I am very obliged to the hon Member when she refers to my contribution as "sweet".

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 at a later stage in this meeting.

THE ELDERLY CARE AGENCY ORDINANCE 1999

HON K AZOPARDI:

I have the honour to move that a Bill for an Ordinance to make provision for the care of the elderly in the community, and, in that regard, to establish the Elderly Care Agency; and for matters connected thereto, 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. This is a Bill to set up the Elderly Care Agency and it should be read in the context of announcements that have been made public by the Government since July in relation to the proposed developments in the field of elderly care. Hon Members will recall that in July we announced an in principle agreement with the Board of Governors of the John Mackintosh Trust to take the matters further in relation to elderly care generally in Gibraltar. The idea was to take over the running of the current residential homes and also establish a nursing home and a base from which to deploy community services, all at the same Mount Alvernia site. We said that various umbrella of services would be delivered through what we called an "Elderly Care Agency" which would be set up under statute and this indeed is the Bill to set up that statute. Before, of course, we take over the running of the residential home there are other formalities to fulfil but I will not bore Members of the House with them. I think I talked publicly

about that last week and I think the hon Members are aware of the formalities that need to be undertaken.

In general terms the format of the Bill follows the constitution and format of the Gibraltar Health Authority Ordinance and that is the instrument from which it is derived and hon Members who are, of course, aware of the terms of the Gibraltar Health Authority Ordinance will therefore by analogy not need me really to take them through the provisions of the Bill because they will be aware of the general structure of this. In any event, for the sake of Hansard, I will just set out that the ECA is established with a particular composition under Section 3 which will be chaired by the Minister with responsibility for elderly care, that it shares the common structure of the Health Authority in the sense that there will be an agency and a management board, that the Management Board composition is set out in Section 11. Sections 6 and 7 set out the powers and duties of the Agency, again, very similar to the Health Authority and drawn from that Ordinance. There are other general powers and duties of the Agency also set out in the consequential sections. Mr Speaker, the purpose of the Bill, as I said in my initial contribution is to set up the structure through which care for the elderly will be delivered once the running of the Home is transferred from the Board of Governors to this Agency and also to take on board and implement the other reforms that have been publicised. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON J L BALDACHINO:

Mr Speaker, we will be abstaining on this Bill. There are certain provisions which we agree with and there are certain things which we do not agree with. The Minister has quite rightly said this is the format of the GHA with the only provision, I suppose, that its difference is the powers of the Agency to engage in fund raising activities.

Mr Speaker, we believe that there are certain things which have been duplicated which could well have been covered by the Gibraltar Health Authority. As a matter of fact the Minister when he gave the press conference with his hon Colleague the Minister for Social Services stated that people would be seconded from the GHA to the new established Agency. Obviously, we believe there are areas which already are provided and if the service is already provided the Government Members might want to enlarge or extend that service but perhaps certain services already provided by the GHA and by the Social Services. The Agency, as far as we are concerned, will have a duplicate role. The Finance Officer, for example, could well have been covered by the GHA and the persons who are now doing the interviews, as I understand it, for the Agency to employ people is the personnel from the GHA. In that case if the Government wanted to put an Agency, we are not against the setting up of an Agency as such but separate to the function of the Gibraltar Health Authority which we believe could have given a better service to whatever they wanted to set up.

The other thing is, I suppose that the Geriatric Ward from the Hospital will be transferred to Mount Alvernia. I think that is one of the things that the Minister said in his press conference. We would like to know irrespective of whether a person requires medical attention or not will those persons be transferred to the new Agency? If they do that will they need to pay the contribution which normally residents of Mount Alvernia do? As far as we are concerned the medical care is covered by the insurance that people pay or have paid during their lifetime. Those are questions that we need to ask. What is going to happen in that area? We believe that to achieve what the Government want to achieve there was no need to set up an Agency as is enshrined in this Bill before the House. It could well have been done through the GHA and obviously we are not against an Agency having been set up to look at other matters but people should be employed under the Gibraltar Health Authority. What we do not have at the moment is that there will be certain persons seconded to the new Agency working alongside people who are employed through the Agency. We think it would have been a much neater exercise to have done

it through the GHA even though if they wanted to set up an Agency they could have set up an Agency but not with the powers that they have. If one looks at the Bill it is clear that the Agency or the Board have very little power. Most of it in any case is controlled by the Minister responsible for the elderly. The Agency has very little powers apart from organising fundraising activities. A copy of the accounts not only has to go to the Minister but another copy has to go to the Chief Minister. If the Minister is responsible there and he gets the accounts obviously he could very well take it to the Council of Ministers or pass it on to the Chief Minister but it is explicit in this Bill that a copy must go to the Chief Minister. I wonder why that provision has been put there. We shall be abstaining. We would agree if there is a need to extend the service to our elderly but we do not agree the method by which they intend to do it through this Bill.

HON J J BOSSANO:

Could I ask the Minister, at the moment the admission of people into Mount Alvernia is something which is a matter for the Board of Mount Alvernia, is this something that is going to be changed as a result of this Agency?

HON K AZOPARDI:

I take that to be the hon Member's contribution as well?

HON J J BOSSANO:

I just want clarification on that.

HON K AZOPARDI:

The way I understand that it happens when the hon Member says that admissions is handled by the Board of Governors, I would agree with that in a loose sense. The way I understand it, the Board of Governors does not meet just to consider individual applications in the sense that the Board of Governors involves the Bishop and the Dean and all of that. My understanding is that

they themselves do not meet to deal with that, that there is an admissions policy or criteria set up that is administered by the Administrator who will apply that criteria to admit or not people but when there are grey areas or specific cases I understand that he then consults the Board who will give him a specific direction. That is the way I understand that it happens right now. Obviously one of the things that the Board of Governors said to us when we were discussing the implementation of the agreement in principle was that they were keen to amend the admissions policy because it is an admissions policy which largely has to take into account the terms of the Will that are to a large degree now out of date in the sense of the concepts and they were keen that there should be more modernisation of the admissions policy and more medical input into that. I think that in practice what happens at the moment is that the Hospital Manager from St Bernards has an input. I think there needs to be a greater role of the doctors and the clinicians and they are keen for a review of the admissions policy generally and that may follow once the ECA set up and indeed takes over the management. There needs to be a group set up and I think they recognise the need to amend the admissions policy itself, not radically but just to take into account more modern concepts.

I will deal with some of the points that the hon Member mentioned when he says that the ECA has little power. As I said, the Ordinance establishing the ECA is almost a carbon copy of the GHA Ordinance. I do not accept that the GHA has little power. It has as much power as it has. It actually can implement health policy and it does so and it executes Government policy after the Health Authority has set that policy. The Management Board executes it. This is the intention under this Ordinance. The ECA will set the policy of the ECA and it will be implemented by a Management Board. It is supposed to be an executory agency in that regard and it has as many powers or as little powers as the GHA has so I do not accept the hon Member's point that it has little power. He may perceive that the GHA has little power. I do not. I think the GHA has substantial power to implement in the field of health care and so will this in the field of elderly care. I think perhaps we just do not agree on that point. Neither do we

agree, may I say, in relation to whether this Ordinance was necessary or not. The hon Member's point was it is not necessary, a lot of it can be done through the Health Authority. That is his judgement. The judgement of the Government is that that is not the case. The hon Member says that a lot of it was already being done. Again, here we do not agree. That is precisely why we are setting up the Elderly Care Agency. I think the fundamental misconception that the hon Member has when he makes that contribution is that he thinks that the elderly should be treated like the sick. The people who are elderly are not sick, they are just old and they need specific care because they are old not because they are sick or in need of acute care. I think that is the misconception that the hon Member has when he addresses his mind and presents to the House the fact that in his view the Health Authority should be purporting to take this forward. The Government's view is quite distinct, that the Elderly Care Agency is indeed necessary to make that distinction between services that are being provided by an Agency specifically to provide elderly care and the Health Authority that is there to deal with people who are sick, whether it be people who are in need of primary or secondary care. I think that is the distinction that I would make in that particular regard.

I would also say and restate that it is not that the Health Authority already provide these services. The services that we envisage will be provided, Mr Speaker, are, for example, apart from taking over the residential home which is in existence at the moment, we intend to establish a nursing home which is not in existence at the moment and indeed to provide a base from which to deploy Community Services. All of that needs to be done and it will be done for the first time. Those are things that are being done currently and it should be done by an Agency which is specifically identified in the community as an Agency that is dealing with things of elderly care and not one which should be confused by the Health Authority. Mr Speaker, those are my comments on the hon Members' contributions. I would only say, because he was asking me whether the geriatrics would be transferred from where they are automatically to the Mount Alvernia when the Nursing Home is established, that is not the intention. They will be

transferred if they fall under the terms of what we would define as long stay elderly not in need of acute care. There needs to be an assessment of those patients and those who are not in need of acute care, only in need of nursing home care, will be transferred. Those in need of acute care will be in the hospital. The problem we are having now is that of course beds are being blocked by the elderly who have nowhere else to go and who may need nursing care but they do not need acute care. That is one of the problems that hopefully will be alleviated by this development.

HON J L BALDACHINO:

Would the Minister give way? I also asked if the persons who will be transferred and who do not need, according to the Minister, medical care, will they also be deducted like everybody else in Mount Alvernia? They might be in hospital today and they might have been in hospital for a long time.

HON K AZOPARDI:

I thank the hon Member for reminding me on that one. We need to refurbish the site so I am not sure when exactly this will happen. We want to phase it in as soon as possible but I am not sure exactly when it will happen but when it does happen they will be transferred, or rather the ECA for the moment, once it takes over the management of the Home will be assuming the admissions policy. Therefore, those people who are being transferred because they have been assessed by the Consultant Geriatrician who are not in need of acute care and therefore do not need to be in hospital will be offered a transfer to Mount Alvernia in accordance with the admissions policy of Mount Alvernia. Therefore, they will make their pension contribution to that if they decide to opt for Mount Alvernia, as indeed is the case now. The admissions policy may be reviewed in due course but that will be the position when the ECA takes over. There will be no change in that regard.

HON J J BOSSANO:

Has the Minister said they have got a choice? He said they will be offered?

HON K AZOPARDI:

Everyone has a choice to be in hospital or not. We will judge whether clinically they need to be in hospital or whether clinically we think they should be in the Nursing Home and we will say to them "you should be in the nursing home". If the hon Member has a traffic accident and needs to be in the surgical ward we think that the hon Member may need surgical care but the hon Member has a discretion not to accept. That is always the case. One always has a choice. Consent is a fundamental principle of the delivery and acceptance of health care or elderly care and to that extent everyone has a choice.

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

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

Absent from the Chamber: The Hon T J Bristow

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 at a later stage in the meeting.

The House recessed at 4.45 pm.

The House resumed at 4.50 pm.

ADJOURNMENT

HON CHIEF MINISTER:

I beg to move that the House should now adjourn until Friday 15th October 1999, at 9.30am.

Question put. Agreed to.

The adjournment of the House was taken at 4.55 pm on Monday 11th October, 1999.

FRIDAY 15TH OCTOBER 1999

The House resumed at 9.45 am.

PRESENT:

Mr Speaker (In the Chair)
(The Hon R R Rhoda QC in the absence of the Hon Judge
J E Alcantara CBE)

GOVERNMENT:

The Hon P R Caruana QC – Chief Minister
The Hon P C Montegriffo – Minister for Trade and Industry
The Hon Dr B A Linares – Minister for Education, Training,
Culture and Youth

The Hon Lt-Col E M Britto OBE, ED – Minister for Government Services and Sport
 The Hon J J Holliday – Minister for Tourism and Transport
 The Hon H A Corby – Minister for Social Affairs
 The Hon J J Netto – Minister for Employment and Buildings and Works
 The Hon K Azopardi – Minister for the Environment and Health
 The Hon T J Bristow – Financial and Development Secretary

OPPOSITION:

The Hon J J Bossano – Leader of the Opposition
 The Hon J L Baldachino
 The Hon Miss M I Montegriffo
 The Hon A J Isola
 The Hon J J Gabay
 The Hon J C Perez
 The Hon Dr J J Garcia

IN ATTENDANCE:

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

COMMITTEE STAGE

HON CHIEF MINISTER:

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

1. The Companies (Accounts) Bill 1999.
2. The Companies (Consolidated Accounts) Bill 1999.
3. The Business Names Registration (Amendment) Bill 1999.
4. The Limited Partnerships (Amendment) Bill 1999.

5. The Companies (Amendment) Bill 1999.
6. The Registered Trust Bill 1999.
7. The Social Security (Employment Injuries Insurance) Ordinance (Amendment) Bill 1999.
8. The Social Security (Insurance) Ordinance (Amendment) Bill 1999.
9. The Medical (Group Practice Scheme) Ordinance (Amendment) Bill 1999.
10. The Social Security (Open Long-Term Benefits Scheme) Ordinance 1997 (Amendment) Bill 1999.
11. The Public Finance (Control and Audit) (Amendment) Bill 1999.
12. The Gibraltarian Status (Amendment) Bill 1999.
13. The Public Health Ordinance (Amendment) Bill 1999.
14. The Road Traffic (Windscreen Transparency) Ordinance 1998 (Amendment) Bill 1999.
15. The Health, Safety and Welfare at Work Bill 1999.
16. The Working Time Bill 1999.
17. The Medical and Health (Amendment) Bill 1999.
18. The Elderly Care Agency Bill 1999.

THE COMPANIES (ACCOUNTS) BILL 1999

Clauses 1 to 17, Schedules 1 to 10 and The Long Title

Question put. The House voted.

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

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

Clauses 1 to 17, Schedules 1 to 10 and The Long Title stood part of the Bill.

THE COMPANIES (CONSOLIDATED ACCOUNTS) BILL 1999

Clauses 1 to 14, Schedules 1 to 3 and The Long Title

Question put. The House voted.

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

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

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

Clauses 1 to 14, Schedules 1 to 3 and The Long Title stood part of the Bill.

THE BUSINESS NAMES REGISTRATION (AMENDMENT) BILL 1999

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

Clause 3

HON P C MONTEGRIFFO:

Mr Chairman, I have given notice of an amendment to Section 3 following the point raised by the Leader of the Opposition at the second reading of the Bill. Hon Members will recall that the point that was raised was whether the substitution of "Minister" for "Governor" in any way called into question the basis of the appointment of civil servants in the context of the position of Registrar. We explained at the time that the phrase "appointment" meant probably designation rather than appointment. But to put the matter beyond doubt the amendments which we are now seeking to move to section 3, whilst substituting "Minister" for "Governor" makes clear that what the Minister does will designate the Registrar rather than appoint the Registrar. Hopefully, it clears the potential ambiguity that was raised.

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

Clauses 4 to 18 and The Long Title were agreed to and stood part of the Bill.

THE LIMITED PARTNERSHIPS (AMENDMENT) BILL 1999

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

THE COMPANIES (AMENDMENT) BILL 1999

Clauses 1 to 42 were agreed to and stood part of the Bill

Clause 43

HON A ISOLA:

Mr Chairman, on Clause 43, sub-paragraph 267A(15) on page 369, something that has been brought to my attention, I think that should read after the expiration of the period of 10 years it should not have "from the date" because on the original sub-clause (1) that it refers to, and then it should be "referred" not "deferred". It would simply read better if it read "after the expiration of the period of ten years" which is in 267A(1) it refers to "before the expiration of 10 years from the publication of a notice" and then delete the words "from the date" and then amend "deferred" to read "referred". I think that makes it clear.

HON P C MONTEGRIFFO:

I agree with those amendments.

Clause 43, as amended, was agreed to and stood part of the Bill.

Clauses 44 to 52 and The Long Title were agreed to and stood part of the Bill.

THE REGISTERED TRUST BILL 1999

Clauses 1 to 9 and The Long Title were agreed to and stood part of the Bill

THE SOCIAL SECURITY (EMPLOYMENT INJURIES INSURANCE) ORDINANCE (AMENDMENT) BILL 1999

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

THE SOCIAL SECURITY (INSURANCE) ORDINANCE (AMENDMENT) BILL 1999

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

Clause 2

HON CHIEF MINISTER:

Mr Chairman, hon Members will recall that I gave notice during the second reading of amendments which I circulated in the form of a letter and in the form of an annotated text of the Bill so that hon Members could follow it. The amendments are as follows:

1. Subclause 2(5) shall be renumbered subclause 2(6).
2. New subclause 2(6) shall be amended by substituting for the reference "10A" the reference 11.
3. The subclause previously numbered 2(6) shall be renumbered subclause 2(5).
4. New section 10B, which was inserted into the Ordinance by the clause previously numbered 2(5), shall be deleted.
5. Subclause 2(7) shall be deleted.

Social Security (Employment Injuries Insurance) Ordinance; and

“maternity leave period” shall be construed in accordance with the Employment (Maternity and Health and Safety) Regulations 1996”.

6. New section 11A, which is now inserted into the Ordinance by new clause 2(6) of the Bill, is amended as follows –

a. new section 11A(1) is amended by deleting the words “and to section 10B above”, and by substituting for paragraph (a) the following paragraph –

“she has, on or after the 5th July 1999, paid contributions as an employed person under this Ordinance for at least 26 weeks in the 52-week period ending in the 15th week before the expected week of confinement,” and

b. new section 11A is amended by inserting after subsection (2) the following subsections –

“(3) Maternity allowance shall be paid at the weekly rate of injury benefit (excluding dependants allowance) to which the person entitled to maternity allowance would have been entitled to receive during her maternity leave period had she been a beneficiary in relation to such benefit.

(4) The employer shall be entitled to deduct from any maternity pay, payable to an employee under a contract of employment or terms of employment, the amount of any benefit to which the employee may be entitled under this section.

(5) In this section –

“injury benefit” means injury benefit payable to persons who have attained the age of 18 years under Part I of Schedule 2 to the

c. New section 11A(1)(d) is amended by inserting between the references “4” and “7” the reference “6”.

7. Subclauses currently numbered 2(8) and 2(10) shall be renumbered 2(7) to 2(9).

HON J J BOSSANO:

I think there is one that does raise a new issue which is the new section 11A(1) where the number of weeks in which a lady has to be employed before she can claim the benefit is now 26 weeks ending on the 15th week. That is a new.....

HON CHIEF MINISTER:

That is not a new part. The new part comes in restricting that the 26 weeks which used to be in the original Bill now has to be within the 52 week period which is not in the Bill as published. The reason for that is that we were advised that as originally drafted Section 10B(1) which is the equivalent provision, because there has been renumbering as well, simply required 26 weeks including an ending with a 15th week. Of course, that meant that so long as one of the weeks was that week it did not matter over what period of time previously the contribution record had been earned. The new language is the same language as applies for example in the United Kingdom and that is, the qualification requirement is 26 weeks in the immediate 52 week period. That aspect of that, in the immediate 52 week period before is added. That is a novelty here. That is how the amendment differs from the Bill as published. But the 15th week before the expected week

of confinement is still there. The only difference, just in the certain knowledge that I am repeating myself, is that now the 26 weeks have to fall within the 52 week period ending in the 15th week before the expected week of confinement as opposed to over an unspecified period of time which would have defeated the intention of the section.

HON J J BOSSANO:

Mr Chairman, in the original Bill there is no provision in 11A on the...

HON CHIEF MINISTER:

Mr Chairman, that is what I explained to the hon Member. One of the things that the amendment does is that it restructures the whole layout of this. What is in the Bill as section 10B(1) now becomes new section 11A(1). With the text changing in the manner that I have already explained the view was taken that the Bill as originally published confused the structure of the Ordinance which in one section, section 10 simply lists the benefits and then there is a separate section exclusively dealing with maternity benefits. What used to be section 10B(1) has been transferred to section 11 because it fits better in the structure of the principal Ordinance as providing the nitty gritty in respect of one of the benefits which are simply listed in section 10. I apologise to the hon Member for not having explained that to him.

HON J J BOSSANO:

Can I just say for the record, Mr Chairman. We are against the provision on the 26 weeks but we are in agreement with the change which produces better legislation if that is what the Government want.

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

Clauses 3 and 4 and The Long Title were agreed to and stood part of the Bill.

THE MEDICAL (GROUP PRACTICE SCHEME) ORDINANCE (AMENDMENT) BILL 1999

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

THE SOCIAL SECURITY (OPEN LONG-TERM BENEFITS SCHEME) ORDINANCE 1997 (AMENDMENT) BILL 1999

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

THE PUBLIC FINANCE (CONTROL AND AUDIT) (AMENDMENT) BILL 1999

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

THE GIBRALTARIAN STATUS (AMENDMENT) BILL 1999

Clauses 1 to 16, the Schedule and the Long Title were agreed to and stood part of the Bill.

THE PUBLIC HEALTH ORDINANCE (AMENDMENT) BILL

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

THE ROAD TRAFFIC (WINDSCREEN TRANSPARENCY) ORDINANCE 1998 (AMENDMENT) BILL 1999

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

Clause 2

HON J J HOLLIDAY:

Mr Chairman, I beg to move the amendment standing in my name. This amendment introduces two new elements to the Bill following the contribution by the Opposition Member during the Second Reading of the Bill. Firstly, the Minister will issue exemptions on the recommendation of the Chief Motor Vehicle Examiner who is the Government Officer with responsibility for enforcing the law and, secondly, the concept of easy identification on the previous draft of the Bill has been clarified. The amendment provides for the introduction of a test of what is reasonable. The Minister will only exempt the vehicle or type of vehicle if he is satisfied that the person with reasonable eyesight can see and later recognise the occupants of the vehicle. It is not, therefore, the Minister's own particular judgement that counts but the Minister's judgement of what a man with reasonable eyesight can see. The amendments are as follows:

Replace clauses 2(2) and 2(3) with new subclause –

"2(2) The Minister may, on the recommendation of the Chief Motor Vehicle Examiner, issue a certificate exempting from subsection (1) –

- (a) a particular motor vehicle or trailer with an arrangement of windows, or
- (b) all motor vehicles or trailers conforming to a specified make and model, which is certified by the manufacturer as only sold with an arrangement of windows

which the Minister is satisfied is sufficiently transparent to enable an outside observer with reasonable eyesight to see the occupants clearly enough to be able to recognise them later".

Subclause 2(4) will need to be consequentially renumbered.

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 HEALTH, SAFETY AND WELFARE AT WORK BILL 1999

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

THE WORKING TIME BILL 1999

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

Clause 4

HON J J NETTO:

Mr Chairman, I did give notice that in Clause 4(4)(b) to delete the words "any person appointed by".

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

Clauses 5 to 10 were agreed to and stood part of the Bill.

Clause 11

HON J J NETTO:

Mr Chairman, I also gave notice that I wanted Clause 11 to read as follows: In section 11(1) the following is deleted from paragraph 7(1)(a) of the Employment (Annual and Public Holidays) Order – "for not less than 20 hours". One would then have section 11(2) and the following is inserted after Schedule 2 in paragraph 4(1) of the Employment (Annual and Public Holidays) Order "and the duration of the annual holidays of part-

time employees shall be calculated on a pro rata to the columns headed "five days or less" in Schedule 2". Then another sub-clause which would be 11(3) which would amend in the tables of Schedule 2 of the Employment (Annual and Public Holidays) Order the words "or less" are deleted in each column headed "five days or less" and each column headed "seven days" is deleted."

HON J L BALDACHINO:

Mr Chairman, there is something which I am not very clear on. We are deleting under the Employment (Annual and Public Holidays) Order the column headed "seven days". What I am asking is under the provisions of the Bill that we are passing there are persons who are exempted on the restriction that is imposed on the seven days working. If we remove the seven days, they will no longer be covered under the Ordinance on the entitlement of days, am I right on this or not?

HON J J NETTO:

In that particular case, the intention is to transpose the directive properly. One of the articles that says it shall not work more than 48 hours. I understand clearly what the hon Member is saying, that there are people perhaps even in the Gibraltar Government whose conditions of employment happen to be seven days a week. It would be for them either bilaterally through their trade unions to enter into a collective agreement that may use the flexibility inside the directive to come to an arrangement with the Personnel Department. But for the purpose of transposing this particular directive, as it stands, the Employment (Annual and Public Holidays) Order, the column of seven days will have to be deleted to enable the proper transposition.

HON J L BALDACHINO:

Mr Chairman, we are talking about annual leave, what the directive says on annual leave, that everybody should be entitled to four weeks annual leave. We are not legislating under this Ordinance for that. Why? That is simply because the directive

also says that if there is higher provision or the practice in the national laws then there is no need to say that everybody should have more than four weeks because nearly everybody has more than four weeks including the public holidays. There is no provision in our laws which says that if somebody works seven days this is the entitlement under the law. By removing this, which there will be people who will be working seven days because it is permitted under the directive and it is permitted by the Bill that we are passing in this House, it means that we are taking that right away from somebody that would probably fall under that category and we do not see the reason why it should be taken away. If we left it there it is doing no harm any way.

HON J J NETTO:

I am informed that under Article 5 of the directive, under Weekly Rest Periods, it does say, "Member States shall take measures necessary to ensure that but each seven day period every worker is entitled to a minimum uninterrupted rest period of 24 hours plus the normal 11 hours daily rest referred to in Article 3."

HON J J BOSSANO:

We do not understand the arguments that the Minister is putting. We are not talking about working seven days, we are talking about them being on holiday for seven days. How can the first period come into the issue? The issue is that if somebody works seven days a week then the four weeks of holiday has to be 28 days, it cannot be 20 days, he cannot be given four weeks of five days if his normal work is seven days. What is being deleted is the entitlement to a holiday of four weeks of seven days. There is nothing here that stops him working seven days, the other 48 weeks of the year. The argument that he has to have a rest period, he is going to be resting all seven days if he wants to because he is on holiday, but he has to be paid seven days a week during the holiday because that is what he gets paid when he is working. It seems to us that what is being deleted is not required and perhaps has an unintended effect. That is why we

are pointing it out. It may be that unintentionally the Minister is actually removing something which should not be removed.

HON J J NETTO:

We continue to hold a view that it is necessary. That people cannot work seven days, they have to work six days and therefore they have got to have that day off.

HON J J BOSSANO:

No, but the Minister is not giving people a day off. The column he is removing is the column that gives him holidays for seven days, not work for seven days. How can he say that he is removing the right of people to be on holiday for seven days because they have to have one day off. We do not understand the logic of that argument at all. We understand that the law prohibits seven days working. There are exceptions to that law. The people who are exempted from the law on seven days working are entitled under the rules that are being repealed to be paid holidays for a seven day week because they work a seven day week. We are asking why is there a need to repeal the seven day holiday for the people who work the seven days. The answer that we are getting is because they have to have one day off. They already have seven days off. One cannot give them one more day because that would make it an eight day week.

HON CHIEF MINISTER:

Mr Chairman, in order not to delay the passage of the Bill whilst we consider the hon Member's point. At least, I understand the hon Member's point and certainly it is not the intention of the Government to interfere with existing rights that are permissible under the directive. We are not certain that the amendment has that effect necessarily but as I am also now being told that the amendment is not necessary, I think we can just leave this provision unamended just in case what the hon Member is saying is correct, because the amendment is not actually necessary to bring about some other necessary or desirable amendment to the

Bill. It was just being done as a way of tidying up. Therefore, on that basis, I think we will be content. If we find upon examination that the matter lies somewhere in between the two positions, we would just have to bring amending legislation in due course. But I am advised that the amendment proposed under this clause is itself not essential. Therefore, on that basis the safest thing is probably to leave it.

HON J L BALDACHINO:

Mr Chairman, I have got another point on the amendment that the Minister is proposing. Maybe.....

MR SPEAKER:

Is this a point referring to an amendment under Clause 11?

HON J L BALDACHINO:

Yes, under 11(2). The Minister said "the duration of the annual holiday of part-time employees shall be calculated pro rata to the columns headed five days or less in schedule 2 of the Employment (Annual and Public Holidays) Order." As I understand it, Mr Chairman, if somebody is working part time obviously when he takes leave he is taking leave for the hours that he should be working. What is meant by pro rata? And why under only five days or less when somebody might be working part time six days, why the difference?

HON J J NETTO:

The number of hours working within five days, that is my understanding and what I have been told.

HON J L BALDACHINO:

Mr Chairman, I understand that a person might work full time and therefore he cannot work more than 48 hours under what we are passing now including overtime. There might be other people

who might be working on a part time basis. When he takes leave, he takes leave for the time and he will be paid according to what he should be working, in other words if it is 20 hours or 15 hours his paid holiday will be that. If somebody that is in employment not less than 48 weeks what does he mean that he will be entitled under that for 15 working days. Pro rata, what does it mean? Because as I understand it, it does not make any difference whether one is working part time or not, because the leave and hours that he will be paid is actually if he were working for 20 days, can I have an explanation on that?

HON J J NETTO:

Yes, we are precisely trying to do exactly what the hon Member is saying. If somebody is working for example 15 hours a week, it would be 15 hours pro rata.

HON J L BALDACHINO:

That is how it is working now?

HON J J NETTO:

No. At the moment the Employment (Annual and Public Holidays) Order explicitly says that no person working under 20 hours shall have any entitlement.

HON J L BALDACHINO:

Just to be clear, the amendment that we are passing here means that a person now, if he is working part time will be entitled to so many days.

MR SPEAKER:

The proposed amendment should now read?

HON J J NETTO:

The amendment should now be Clause 11(1) and 11(2) and we shall leave behind 11(3).

HON J J NETTO:

I am informed that only the last part of 11(3) which is in each column headed "seven days" is deleted but the first part of 11(3) which is in this table in Schedule 2 of the Employment (Annual and Public Holidays Order) the words "or less" are deleted in each column headed "five days or less".

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

Clause 12

HON J J NETTO:

Mr Chairman, I also gave notice at the end of Clause 12 insert the words "of the persons employed therein" after the word "morals".

HON J L BALDACHINO:

Mr Chairman, I do not want to insist but what happens to the 17 year old? This is something which worries me because the detail of rest period and everything is mentioned, for example, under Clause 9(3) a worker between the age of 15 and 18 is entitled to a rest period of not less than 22 days. I am saying this just to draw the attention on the differences. I understand that under our Ordinance a child means somebody under the age of 15 which has an explanation because under the Education Ordinance everybody should be in full time education up to the age of 15. A young person, will he be entitled to a rest period and everything that is afforded under this Ordinance as being under 18 but in this case he is considered something different. What I am asking now is, why the difference?

HON J J NETTO:

If the hon Member will remember in my speech I did say that we were dealing with the transposition of the Working Time Directive and a small number of the protection of young workers but not everyone and in the pipeline certain grey areas which are in a little bit of limbo at the moment will be referred in the transposition of the protection of young persons which is particularly in the areas which the hon Member has said now. This one here is because additionally we are taking the advantage of bringing into our legislation the ILO Convention. But I can say that that particular point that the hon Member has just said now will be covered in a following Bill to come to the House on the EU directive on the protection of young workers.

HON J L BALDACHINO:

I fully appreciate what the Minister is saying. It is not a question of principle that I am saying this, it is just drawing the attention that as far as we are concerned seeing that in other areas and seeing that we are permitted to be more protective under the directive, what we cannot do is under protect people, that in Gibraltar a 17 year old should be considered exactly the same as a 16 year old even though an over 18 year old is different. As a matter of fact, the Bill has a difference when it comes to other things like rest periods and things that it says "between the age of 15 and 18." It just appears to us that if by including 17 here it would just be protecting people that are 17 years of age.

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

Clauses 13 to 20 and the Long Title were agreed to and stood part of the Bill.

THE MEDICAL AND HEALTH (AMENDMENT) BILL 1999

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

THE ELDERLY CARE AGENCY BILL 1999

Clauses 1 and 2 stood part of the Bill.

Clause 3

HON K AZOPARDI:

Mr Chairman, can I move the amendment standing in my name, copy of which has been circulated to hon Members. The deletion of "two" in Section 3(1)(d) and the insertion thereof of "one" and in Section 3(1)(f) the deletion of "three" and substitution thereof by "four". The reason for the amendment being that while there may be two medical practitioners appointed to the Agency itself it gives more flexibility in future should the need not be the same without further coming to this House to amend the Ordinance.

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

Clauses 4 to 14 stood part of the Bill.

Clause 15

HON K AZOPARDI:

Mr Chairman, the other amendment I would like on this Bill is to delete the phrase in Section 15(1) "three months after the end of that year" and replace it by the phrase "nine months (or such longer period as the Minister shall allow) after the end of each financial year". The reason for that is as I explained to hon Members on the second reading of the Bill, that the text of the Elderly Care Agency Ordinance was drawn from the Health Authority Ordinance and in drafting the Bill there was an omission and an amendment that had taken place in 1989 in the Health Authority Ordinance to actually say what I am moving today, the Section 15 should say, and has been incorporated in the Health Authority Ordinance since 1989 was in fact omitted and all this does is reflect the position as indeed the Health Authority Ordinance reflects.

Clause 15, as amended, stood part of the Bill.

Clauses 16 to 23 and the Long Title stood part of the Bill.

Question put on the Elderly Care Agency Bill 1999. 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 T J Bristow

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

THIRD READING

HON CHIEF MINISTER:

Mr Speaker, I have the honour to report that:

1. The Companies (Accounts) Bill 1999.
2. The Companies Consolidated Accounts Bill 1999.

3. The Business Names (Registration) (Amendment) Bill 1999.
4. The Limited Partnerships (Amendment) Bill 1999.
5. The Companies (Amendment) Bill 1999.
6. The Registered Trust Bill 1999.
7. The Social Security Employment Injuries Ordinance (Amendment) Bill 1999.
8. The Social Security Insurance Ordinance (Amendment) Bill 1999.
9. The Medical Group Practice Scheme Ordinance (Amendment) Bill 1999.
10. The Social Security Open Long Term Benefits Scheme Ordinance 1997 (Amendment) Bill 1999.
11. The Gibraltarian Status (Amendment) Bill 1999.
12. The Public Health Ordinance (Amendment) Bill 1999.
13. The Road Traffic (Windscreen Transparency) Ordinance 1998 (Amendment) Bill 1999.
14. The Health Safety and Welfare at Work Bill 1999.
15. The Working Time Bill 1999.
16. The Elderly Care Agency Bill 1999,

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

The Business names Registration (Amendment) Bill 1999; the Limited Partnerships (Amendment) Bill 1999; the Companies (Amendment) Bill 1999; the Registered Trust Bill 1999; the Social Security (Employment Injuries Insurance) Ordinance (Amendment) Bill 1999; the Social Security (Insurance) Ordinance (Amendment) Bill 1999; the Medical (Group Practice Scheme) Ordinance (Amendment) Bill 1999; the Social Security (Open Long-Term Benefits Scheme) Ordinance 1997 (Amendment) Bill 1999; the Gibraltarian Status (Amendment) Bill 1999; the Public Health Ordinance (Amendment) Bill 1999; the Road Traffic (Windscreen Transparency) Ordinance 1998 (Amendment) Bill 1999; the Health, Safety and Welfare at Work Bill 1999 and the Working Time Bill 1999, were agreed to and read a third time and passed.

The Elderly Care Agency Bill 1999.

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 T J Bristow

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

The Bill was read a third time and passed.

The Companies (Accounts) Bill 1998 and The Companies (Consolidated Accounts) Bill 1999.

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

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

The Bills were read a third time and passed.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Thursday 18th November 1999 at 3.00 pm.

Question put. Agreed to.

The adjournment of the House was taken at 10.45 am on Friday 15th October 1999.

THURSDAY 18TH NOVEMBER 1999

The House resumed at 3.03 pm.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC – Chief Minister
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 QC – Attorney-General
The Hon T J Bristow – Financial and Development Secretary

OPPOSITION:

The Hon J J Bossano – Leader of the Opposition
The Hon J L Baldachino
The Hon Miss M I Montegriffo
The Hon A J Isola
The Hon J J Gabay
The Hon J C Perez
The Hon Dr J J Garcia

ABSENT:

The Hon P C Montegriffo – Minister for Trade and Industry

IN ATTENDANCE:

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

DOCUMENTS LAID

The Hon the Attorney-General 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 Attorney-General laid on the Table the Revision of the Laws (Supplement No.10) Order, 1999.

Ordered to lie.

The Hon the Financial and Development Secretary laid on the Table Statements of Consolidated Fund Reallocations approved by the Financial and Development Secretary (No.17 of 1998/99 and No.1 of 1999/2000).

Ordered to lie.

MOTIONS

HON CHIEF MINISTER:

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

Question put. Agreed to.

HON CHIEF MINISTER:

Mr Speaker, I beg to move the motion standing in my name and which reads:

“That this House approves by resolution the making of The Indonesia (Supply, Sale, Export and Shipment of Equipment) (Penalties and Licences) Regulations 1999.”

Mr Speaker, in view of the current situation in East Timor where serious violations of human rights and international humanitarian law have taken place and continue to take place the Council of the European Union, through its common position of 1999/624/CFSP and its adoption of Regulation 2158/1999 have prohibited the sale, supply, export or shipment, directly or indirectly of equipment listed in Annex 1 Parts A and B, whether or not originating in the Community, to any person or body in the Republic of Indonesia or to any person or body for the purposes of any businesses carried on in or operated from the territory of the Republic of Indonesia. The Council Regulation also prohibits the participation in related activities, the object or effect of which is directly or indirectly to promote the transaction or activities which I have just referred to. Mr Speaker, there are limited exemptions for the sale, supply, export et cetera to Indonesia once conclusive evidence is obtained that the end use of the equipment listed in Annex 1 Parts A and B of the Council Regulation is not for internal repression or terrorism.

Mr Speaker, the Council Regulation came into force on the 11th October 1999 and it will apply until 17th January 2000 unless renewed. The regulations before the House make it an offence to infringe the prohibition in the Council Regulation. It provides for the licensing of sales, supplies and exports and shipment of equipment in accordance with the Council Regulation and makes provision for enforcement. I should add, as was the case the last time we debated a similar motion in relation to Yugoslavia that we are not transposing into the Law of Gibraltar the regulation itself. The regulation had immediate and direct legal application throughout the territory of the Community the moment that it was

promulgated on 11th October 1999. What we are doing and what other Parliaments around the Community have done since 11th October is that we are making provisions within our law creating criminal sanctions for breaches of the prohibition contained in the regulation. I commend the motion to the House.

Question proposed.

HON J J BOSSANO:

I wish to speak, as I have spoken the last time and the time before that on the procedure that is being used to give effect to this Community obligation in Gibraltar. This is the third time that provisions in the European Communities Ordinance 1972 has been used. It was never used prior to the first occasion in July on the Federal Republic of Yugoslavia. We still get no new enlightenment of what it is that makes this methodology preferable to any other one, which is the point that I have raised on the two previous occasions. I have to say that on this occasion, given that the motion has annexed to it the Council Regulation, I would like to draw the attention of the House to the fact that in Annex 2 there is a list of the competent authorities referred to in Article 1(2) of the Regulation. Article 1(2) of the Regulation provides that the competent authorities of the Member State listed in Annex 2 may authorise transactions or activities referred to in paragraph 1 in respect of the items listed in Part B of Annex 1 when they have obtained conclusive evidence that the end use of this item is not for internal repression or for terrorism. What we have is that the EEC Regulation which, as we have been told applied here the day it was published on 11th October makes a provision which allows in respect of each Member State the competent authority to permit exports to Indonesia once it is satisfied that the export is not going to be used for the purposes obviously related to the situation there of repression of the people of East Timor with whom we clearly have to have the greatest sympathy, given that they were exercising their right to self-determination and given that they are in front of us in the United Nations list of non-self governing territories when it gets discussed once a year, but that does not alter the concerns that I

have expressed in relation to the way we are proceeding when giving effect to this. In fact, we are not listed in that list of competent authorities. The competent authority for the Member State United Kingdom is the Export Policy Unit of the Department of Trade and Industry in King's Gate House. That is on page 13. It would seem to me that since the 11th October anybody who wanted to export to Indonesia had to satisfy the Export Policy Unit of the Department of Trade and Industry in King's Gate House. That is as I read the provisions in the EEC Regulation.

I pointed out at the last meeting of the House in respect of the sanctions against the Federal Republic of Yugoslavia that the provisions in July had required notification to the Commission who would then publish. I think the record will show that I said at the time that the publication had taken place and in fact we were not mentioned. We were informed that the Chief Secretary had written asking for our inclusion. I think that is the answer that I got at the time or at least that he had been instructed to do so and the Chief Minister was not very sure whether it had already happened or not. In fact in respect of the first motion that we discussed in this House last July the competent authority is the same one as in this one, that is, it is the Export Policy Unit of the Department of Trade and Industry. I have the impression that that was because that had been notified to the Commission before we had actually done anything here and that our notification was following. We are now approving, in the House, by resolution, Regulations which say that the licence to export the prohibited goods to Indonesia can be given by the Collector of Customs. But, of course, the law says that the intending prospective exporter has to satisfy the Export Policy Unit in King's Gate House. Is it that if somebody goes to the Collector of Customs, he submits the evidence to the Export Policy Unit in King's Gate House, can he take the decision himself? If he takes the decision himself, is he acting ultra vires Council Regulation 2158/1999? These are consequential questions that I am asking to a point that I have had raised before in the previous two motions and which I had hoped might have been looked into. Let me say that given that we were not given an explanation at the time in the House, subsequent to the meeting of the House I contacted the Foreign Office myself to try

and get some kind of explanation and they did not seem to have a clue. We are certainly not voting for this until we know what the position is and we will have to vote against. Let me say, for the record, that we are entirely on the side of East Timor, not on the side of Indonesia and we are entirely on the side of the people of Kosovo and not on the side of the Serbians, for the avoidance of doubt.

HON CHIEF MINISTER:

Mr Speaker, I think the hon Member's analysis of the difficulty that arises from the UK's failure to take account of the need to list Gibraltar competent authorities is absolutely right but he also knows that it is not a new problem. There are many European Union directives and regulations in almost every walk of life where there are either an Annex of Competent Authorities or authorities of some sort and that Gibraltar does not feature on the list and indeed is not just limited to competent authorities. There are European Union laws that apply to companies, for example. There is a law that says in the United Kingdom "companies" means companies incorporated under the Companies Act of the United Kingdom and there is no provision in respect of Gibraltar. Then we say "hang on, does that mean that our companies do not have to comply, because they are not in the definition of companies under the UK?". The answer is "no, no, no, that is not what it means at all". Of course we have got to comply. The fact that separate provision is not made for Gibraltar does not mean that Gibraltar does not either have to comply or complies through its established competent authorities. I cannot quarrel with that aspect of the hon Member's analysis of the position in that part of his contribution.

There is a slight difference between this case and the last Yugoslavia case that we did. There was not a list of competent authorities in the measure itself. There was simply provision in the measure that required Member States to appoint whatever competent authorities they wanted and that that then had to be communicated to the Commission and the hon Member seems to recall that thereafter the Commission would publish. I have to say

that I do not have any recollection of that but I am not thereby intending to take issue with him on the matter. What I told him last time was that in our law we had designated the Collector of Customs in that case as the competent authority and that we had asked the United Kingdom to communicate their notification of that appointment of competent authority to the Commission in compliance with the obligation in the regulation so to notify the Commission. What I said I did not know was whether the UK had yet done that but certainly the Gibraltar Government had asked for it to be done. I do not recognise what the hon Member says about the list having been published and ours not being on it but that is not to say that I am not joining issue with him on that. It is just that I do not recall that.

HON J J BOSSANO:

Would the hon Member give way? Mr Speaker, it was published in the Official Journal on the 27th May and it reflects the notification under the first Yugoslavia Sanctions Order that was passed before the summer recess. The notification obviously was published as the names and addresses of the competent authorities referred to in Article 2 of Council Regulation 900/1999 and there it is the Export Policy Unit, the same as in this one.

HON CHIEF MINISTER:

Yes, but the hon Member has the papers in front of him, is not that list of published notified competent authorities prior to our passing of the regulation? I think he will find that it is. It may still not have been communicated and it may still not be on the list but I do not think it could possibly be on that list because it pre-dates the passing of the resolution.

Mr Speaker, I do not know whether we should agree not to debate this every time we do it. The hon Member questions the procedure. The procedure is, for the purposes of the record, a provision in the European Communities Ordinance, Section 4, whereby effect may be given to European Community obligations through regulations passed by the Governor. As I said to him last

time, if the hon Member's concern is that this means that somebody other than the Gibraltar Government chooses the procedure then I can entirely put his mind at rest. The hon Member also knows that having recourse to regulations made by the Governor for the purposes of transposing Gibraltar's EU obligations is not new even to him when he was in office. There are many Ordinances that have been used by the hon Members where the regulation-making power is in the hands of the Governor and that that regulation-making power has been used to make regulations in the field of labour, employment law, et cetera, which does not mean that the Governor decides on what the regulation is or even chooses to invoke that procedure. Simply, that the Government choose to invoke that procedure and place the document in front of the Governor for his signature as has been, happily, the practice in Gibraltar for many, many, many years in terms of that aspect of the Governor's function here. I do not know what other procedures the Government could use short of bringing primary legislation on every occasion that this House needs to ratify. We can do it one of two ways. There is a Council Regulation, Sanctions against Yugoslavia. That has automatic legal application in Gibraltar but the Parliament of Gibraltar has got to make laws creating offences for breaches of those regulations. There are only two ways we can do it. Either this procedure or Government bringing a Bill to this House on each and every case, creating the offences under this local regulations that we are today approving by this motion and it seems to the Government that, given the speed with which these things occur, that there is nothing objectionable in the use of these procedures. As to why it has not been used before he may recall before the Yugoslavia Sanctions Order which as he says was the first time that we had recourse to this procedure, has there been any EU Sanctions procedure that has had to have legislative input in Gibraltar? Certainly there was not one in our time in office before this and I cannot remember if there was any international crisis of that sort before the 16th May 1996 which gave rise to European Union sanctions as opposed, of course, to United Nations Sanctions which are very different and which could not be dealt with under Section 4 of the European Communities Ordinance.

Mr Speaker, the competent authority is the Collector of Customs. That is the regulation that we drew up. That is the regulation that the Governor agreed to sign. I do not know whether the point that the hon Gentleman raises is a valid issue of ultra vires or not. I suspect that it is unlikely to be tested but of course that is not a comment on the merits of the matter. I am sure the hon Member will acknowledge that in the nature of these Council Regulations, especially dealing with matters of foreign affairs of this sort, the Government of Gibraltar simply do not get advance notice. It was not as if we were aware that European countries were cobbling together quickly these Sanctions Order against Indonesia and therefore we never even had the opportunity to point out to the United Kingdom that in the Annex of Competent Authorities they had to make provision for one in Gibraltar. It raises an interesting question of how the Spaniards would have reacted to that if we had had the opportunity and whether this would have prevented the taking of sanctions against Indonesia because it seems to me that Spain attaches overriding importance to Gibraltar's competent authorities not being recognised much more so than it does to the substance of the measure in which the point arises. I do not know whether I have said anything that placates the hon Member at least to feel that he can support the regulation given that the issue that he raises is not in the hands of the Government of Gibraltar in this House. The only option open to us if the hon Member's view were to prevail in this House is that we should refuse to do this because our competent authority is not listed in the Annex, in other words make a political stand on the issue of non-insertion of Gibraltar's competent authorities and I do not think the long-suffering people of East Timor need that. I think we should find other issues on which to make our political stands.

Question put. The House divided.

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

The Hon 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 Dr J J Garcia
 The Hon A Isola
 The Hon Miss M I Montegriffo
 The Hon J C Perez

Absent: The Hon P C Montegriffo

The motion was carried.

BILLS

FIRST AND SECOND READINGS

THE MARITIME SECURITY ORDINANCE

HON CHIEF MINISTER:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the First and Second Reading of Bills.

Question put. Agreed to.

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to give effect to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental shelf which supplements that Convention; to make other provision for the protection of

ships and harbour areas against acts of violence and for connected purposes, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill gives effect in Part II to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, known as the Rome Convention, as supplemented by its Protocol for the Suppression of Acts against Fixed Platforms located on the Continental Shelf which was also signed in Rome on the 10th March 1998. The Bill, in Part III, also makes other provisions for the protection of ships and harbour areas against acts of violence. Part II thus creates the offences of hijacking ships, seizing or exercising control of fixed platforms. Before the hon Member's question whether we have any fixed platforms in Gibraltar, the answer is probably not but it was too difficult to extrapolate that from the legislation process and, in any case, it appears that the Detached Mole falls within the definition of a fixed platform which they will find in the section of the Bill. It also creates the offence of destroying or endangering their safety as well as other offences relating to acts endangering safe navigation or threats of any of these things.

Mr Speaker, Part III, which is the part of the Bill that makes other provisions for the protection of ships and harbours against acts of violence, enables arrangements and directions to be made for searching harbour areas both by the authorities and also by tenants of commercial premises situated within the harbour area. It allows information to be required and the whole or any part of the harbour area to be designated a restricted zone for specified days or times of days and for entry to be restricted at those times. It also makes provision for the establishment of security systems in the context of the loading of passengers and cargo on to ships.

Mr Speaker, there are provisions enabling the issue of enforcement notices and also for ships that do not comply with the established security measures to be detained until they do so. The Bill is an important contribution to the growth and development of Gibraltar as a cruise ship port of call. Cruise companies look for the existence of such security measures when selecting ports of call for their cruise ships. This is especially true of American Cruise Companies who are particularly security-conscious following the Achille Lauro and the City of Porros incident when cruise liners were seized and attacked by terrorist organisations. Mr Speaker, at Committee Stage I shall be moving a number of amendments. The main ones are designed to make clear that the Minister is not able to issue operational instructions to the Police and also to make clear that the exercise of the Minister's powers and functions under the Bill are without prejudice to His Excellency the Governor's responsibility under the Constitution for matters of internal security. Mr Speaker, when this legislation is in place the Rome Convention can and will be extended to Gibraltar. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON J J BOSSANO:

Mr Speaker, I think we will have to wait and see to what extent the proposed amendments deal adequately with what was, when the Bill was published, clearly, a modernisation of the Constitution removing the responsibility of the British Government for stopping hijackers and passing that responsibility to the Minister for Port the Hon Mr Holliday who had difficulty in stopping people fishing, never mind people hijacking, and we have now learned today that he has the added responsibility that he has to prevent people hijacking the Detached Mole as well.

The worrying thing about this is that if there should be, and we hope there never will be, any kind of incident like this and after all the closest we ever had to anything like this was the IRA situation way back in 1988, in the middle of the 1988 General Election, the responsibility, in my view, should clearly be with the United

Kingdom and not with us to protect Gibraltar against these kind of incidents. I have to say that much as we favour decolonisation, I do not think it is a good idea to be lumbered with the responsibilities which currently are the colonial powers and we remain a colony when it suits them, like for example, in the previous one where our competent authority is nowhere to be seen. I imagine that the points that have been made about no conflict with the Constitution will have been cleared up because obviously if the British Government were not happy that this was constitutional they have got the powers to stop it. It would not be a very wise thing for us to pass something in the knowledge that it is going to be stopped. I take it that that point has been cleared. But I have to say that I still have uneasiness about whether we are taking on responsibilities that we should not be taking on. We would like to be satisfied on that before we can support the Bill, otherwise we will have to abstain because we are in favour of doing whatever needs to be done to make Gibraltar more attractive as a port of call for cruise liners et cetera.

HON CHIEF MINISTER:

Mr Speaker, I think I can put the hon Member's mind at rest, although when I tried ten minutes ago I did not succeed on another issue. The original Bill, as drafted, did not pass responsibility for preventing hijacking to the Minister. The part of the Bill that deals with implementing the Rome Convention on ship hijacking is Part II of the Bill. Part II of the Bill is formulated in terms of the usual language of criminal law and does not mention the word "Minister" anywhere in it. If the hon Member has the Bill in front of him, from half way down page 70 to the bottom of page 77, which is the whole of Part II of the Bill, the hon Member will see there that there is no function on the Minister at all and that therefore that part of it in creating those offences there is no question of the transfer of any responsibilities or powers, for that matter, to the Minister. That is the criminal law of the land. It remains where it has always been. It remains the responsibility of the Police to enforce it under the operational directions of His Excellency the Governor. Therefore that issue there does not arise. Part III of the Bill, which is not the implementation of the

Convention but the creation of day-to-day control over port management issues which are necessary in order to operate the Port in accordance with the obligations under the Convention, do give powers to the Minister. What we argued to London was that the Port is now exclusively under Governmental control and that one could not divide the Port, in terms of its day-to-day management responsibilities, for the purposes, for example, of operating responsibilities for the control of the luggage security system, for loading luggage on to cruise ships, that that could not be in the hands of the Governor because that is day-to-day manned responsibility for the day-to-day operation of the Port. Therefore, it is only in Part III of the Bill dealing with things which in the UK also are dealt with by Ministers where there is the introduction in some respects of things to be done by the Minister such as the issuing of guidelines, the issuing of directions, searches of systems for the conduct of passengers that sort of thing in terms of the day-to-day systems rather as what happens in the Air Terminal. I believe that this Bill does not relieve the United Kingdom of responsibility for these issues. As to the other point that the hon Member makes, I can confirm to him that London is content with the Bill and that the terms of the Bill have been agreed with London with whom we have also agreed the text of the paragraph that will be put in when we come to do the amendments of the declaratory paragraph which makes it clear that the exercise of the Minister's functions under Part III of the Bill are without prejudice to His Excellency the Governor's constitutional responsibilities for internal security.

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

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

Absent: The Hon P C Montegriffo

The Bill was read a second time.

HON CHIEF MINISTER:

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

HON J J BOSSANO:

We will not make an issue of it by objecting but given the fact that this has been around since 1998 and we have not seen the amendment before today, if the House is going to carry on after today it would be preferable, from our point of view, to give us an opportunity to look at the effect of the amendment longer. We will not make an issue of it if it is important to get it passed today.

HON CHIEF MINISTER:

It is not important that it should be passed today. The House is not ending today and if the Opposition would like more time to consider it I am happy to hold back the Committee Stage until the next sitting.

THE TOWN PLANNING ORDINANCE 1999

HON K AZOPARDI:

I have the honour to move that a Bill for an Ordinance to amend and consolidate the Town Planning Ordinance, be read a first time.

Question put. Agreed to.

SECOND READING

HON K AZOPARDI:

I have the honour to move that the Bill be now read a second time. This Bill that was published about a month ago, I made public in a press conference that I held round about that time and I did explain publicly the ambit of the proposals itself. I will do so again. Essentially, the main theme of this Bill that is before the House is to introduce an element of public participation in the planning process, something that is not the case today. The current Ordinance dates back to 1973 and the public do not have a right to make representations or be consulted and cannot as an automatic right either influence the planning process. We have seen that in particular the controversial applications, people who issue press releases, they may go to the media, but they do not have a right as a matter of automatic process to influence the planning decision that is then taken by the Planning Commission. In our manifesto we committed ourselves to introduce a modern planning procedure which would carefully balance the views of the public, the interests of the developer, the interests of adjoining owners and the general economic interests of Gibraltar. This Bill before the House today does precisely that. It is in compliance with our manifesto commitment and with our philosophy that there should be greater public participation in the planning process as one of the elements that needs to be tackled in the environmental aspects generally of planning.

If I just address the House briefly on the procedure itself. Hon Members may recall that substantial work went into the drafting of the original Bill and because this is precisely about public participation we wanted to get some comments on the proposed amendments to the Bill before we took this to the House. We issued a Consultative Paper late last year with a letter attached explaining the process and explaining the amendments that we were seeking to make to the legislation. I am happy to say that we then got substantial comments from the public in relation to the proposed Bill and that allowed us to sit down and incorporate many of those comments into the proposed legislation again.

Mr Speaker, if I address the House on the Bill itself now. The different elements are under different heads. Part of the Ordinance seeks merely to consolidate and to modernise the terminology which goes back to 1973 and so primarily that exercise has been conducted, for example, in the first 16 sections of the Bill itself. The first 16 sections have some new provisions but in general terms it is an amended version of what there is today. It is not substantially different. The bulk of the reforms come later from section 16 onwards. There is a new definition of development which is taken. When I guide the House I should say that some of the material in Section 16 onwards is taken from the Town and Country Planning Act 1990 in the UK and primarily Section 16 is taken from Section 55 from the Town and Country Planning Act. There is a definition of "development" in the English legislation which we think will be a better definition to incorporate into our legislation here and we are so incorporating it. We have proposed that it should be incorporated, substituting the former definition that existed under previous legislation in Gibraltar. There are exclusions to subsection 2. The exclusion that is not incorporated here in Gibraltar is one that relates to external appearance which is present in the UK legislation. We think that it is important that works, when they relate to the external appearance, should not be excluded from the operation on the planning procedure and that there should be some element of control especially if we are now trying to guide people as to the colour schemes that they use, specially in Irish Town and that we advertise the colour scheme and that we do not get too many

adverse comments on it. Because of that it is important that we should guide people on external appearance and so we have not provided for that exclusion as they did in the English legislation.

There is a requirement to advertise certain applications under Section 19 and the classes of development to which that section will apply will be Gazetted by Regulation subsequent to the passing of this Bill by the House. The procedure set out in section 19. All applications will have to provide evidence that people have some degree of proprietary interest or have notified the owners of the prospective application. Section 22(3) provides that the Commission is obliged to take account of written representations made to it in respect of certain applications and empowers the Commission to call applicants for oral questions. There is a new appeals mechanism in Section 24. Hon Members will recall that at the moment the Town Planning Ordinance says that appeals go to the Governor and it is a strange convolutive procedure really because there are cases where the Attorney-General is advising the Planning Commission on specific procedure and especially if litigation seems to be contemplated by the assertions of the particular applicants. If a person is aggrieved by the decision of the Commission they then appeal to the Governor who, I understand, takes advice from the Attorney-General on the procedure he should follow. It is just convoluted and circular and, I think, out of date, procedure and I think it needs to be substituted by a statutory tribunal which people will see is easy to follow. It is more transparent. I think there has been a complaint by applicants and appellants in the past that appealing to the Governor is not transparent to the extent that it is not clear. There is delay in response to appeals and people just do not get the clear guidance that should be there in modern legislation. I think that a new Appeals Tribunal, which is the object that is trying to be achieved by Section 24, the establishment of a Development Appeals Tribunal, will I think as guided by Schedule 2 which sets out the procedure clearly of the Tribunal, will I think put paid to that lack of clarity in the appeals mechanism and people will then be able to see that if they are aggrieved they will be able to go to a Tribunal. What tends to happen at the moment is because appealing to the Governor is unsatisfactory generally

because people are not sure how to go about it and how long it takes et cetera, people are not happy with a decision of the Commission, they tend to ring up the Secretary to the Commission, the Town Planner, and ask us to reconsider. It is almost an internal appeal, as it were. It is just not helped as a result of the lack of clarity and I think this new mechanism will be able to give that degree of clarity which will assist the planning process. Apart from that, there is a power in Section 34 to amend planning permission once this has been granted. I think this is important in the context of planning permission can be granted wrongly. In the UK there is a power to vary or revoke planning permission. Revocation of planning permission of course tends to be a draconian power. We have not included this in the legislation. Our power is merely to modify the planning permission but I think it is important in the context of permissions that may be granted wrongly. Hitherto, if permission was granted and the Commission at any stage was presented with evidence which would have perhaps made us take a different decision in the first place we were bound by the original decision and could not modify or revoke the original planning permission and that was the advice given to us by the A-G's Chambers. We have been trying to change that position by introducing a provision which will allow us to modify it if indeed we are satisfied that that is fair in the circumstances of the case. There are certain qualifications in the Bill which hon Members will have seen in that section which do not allow the Government to abuse that particular power. There is also a power to serve a completion notice when planning permission has been granted and the work is not being conducted. Hon Members may ask why do we need that power. I will give hon Members an example. I am told by my Department that planning permission was granted in relation to a particular Building Application in City Mill Lane some 10 years ago. Scaffolding was erected and was left there for years and years and the only way that they were able to pursue that person to complete the works and to make sure that the scaffolding was removed was to issue a Section 23 notice under the current Ordinance on a basis of preservation of amenity. All we are doing with this is trying to make sure that people who reasonably conduct works and they do not leave scaffolding up for five or six

years with it not being addressed. Again, that procedure is present in the UK legislation and so the insertion of it will assist in enforcement. Some times my Department has difficulty in enforcing because they just do not have the powers that the UK authorities have in their planning legislation. Part of the purpose of this legislation, not only is it to introduce public participation but also to give better enforcement powers to the Planning Department so that they can address the matters that need to be addressed.

Mr Speaker, there are some consequential amendments. I will not go into that in detail. The last matter I wanted to mention was that Schedule 1 provides the new composition of the Development and Planning Commission and now will make the membership of the Heritage Trust and GONHS full membership as opposed to co-opted membership. They now acquire voting rights which full membership entitles them to.

Mr Speaker, the basic object of the Bill before the House is one of public participation. I hope that hon Members will agree with me when I say that it is important in a modern planning process for there to be public participation, for people to have the right to make representations. Of course, the interests of developers must be balanced but I think they will be because not only will the Commission be able to receive written representations but the developer will indeed have the right to also make representations on the initial comments made by anyone who objects to development. I think it is important for there to be public participation, for there to be a transparent appeals process, for there to be good enforcement powers. I think it is important also that we do not see this Bill in isolation. This Bill should be seen in conjunction with the other elements of urban renewal and urban reform that the Government are eager to take forward. We have increased the departmental resources of planning because enforcement is a key issue here. We are taking on an additional Planner as I mentioned before, and a Conservation Officer to help in that strategy. Sound legislation is important as an element and this is what is before the House today. It is important to introduce an element of public participation in environmental awareness

and it is important to assist and encourage people in beautifying and enhancing their property and that is the role of the incentives that we have introduced to the Income Tax legislation.

Mr Speaker, I commend the Bill to the House just simply ending by saying that the public participation theme is essential to that package of reforms and I believe it to be a very valuable addition to the legislation of Gibraltar. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON J GABAY:

Mr Speaker, I would like to make just a couple of points on a matter of principle. It would appear that from analysing the various echelons of the new structure which is meant to promote public participation in the decision-making process which is a very noble aim and I do believe that some of these concerns are met in the new legislation. However, I think that in the hierarchical element in the Bill that one notes that at the crest of the power structure is the Chief Minister with absolute overriding powers in terms of the planning schemes. This appears in Section 10. Since we are dealing with domestic matters the replacement of the word "Governor" makes sense, I am not disputing that at all. However, in Section 10 we are reminded, under the heading "Powers of the Chief Minister", not Minister for the Environment, that there is absolute authority to refuse, to reject, to amend, to approve and so on. It is my feeling that it would be more pertinent to have had in that section the Minister for the Environment or indeed the Government as more appropriate and I think it would reflect more the ministerial responsibility. I would like also to comment briefly on the actual composition of the Commission. It will consist of nine members. Three will represent non-Government bodies and this is welcome and a step in the right direction. However, the other six are the Chief Minister appointees according to the Bill. I feel that the balance is not convincing in a democratic sense particularly with no criteria as established in the Bill for the selection of the appointees. In such circumstances it is my feeling that majority voting may not be as fair as we are given to

understand in Schedule 1. Then comes Schedule 2 where we talk about the tribunal that is to be set up. It will consist of five members, all of them appointees of the Chief Minister, according to the Bill. Again, I have the same complaint, that there is no criteria for the basis of selection of these appointees that might in some way give a clearer picture to the public. Therefore, is it realistic to feel or to think that the tribunal will have the features of an impartial court? I think it is a fair question to ask. All in all, I am happy about what is positive. I feel that there is a certain stress on power and appointments by the Chief Minister. Therefore, I see the Bill as a well structured house of cards, one might say, very neatly stacked but very vulnerable to being blown down by the views of the Chief Minister. Thank you Mr Speaker.

HON CHIEF MINISTER:

I just want to say one or two things because I will leave it to my hon Colleague the Minister with responsibility in these matters, to explain to the hon Member the extent to which he has misread and misunderstood the Bill that he purports to be legislating in this House today. There is just one point that the hon Member has made which provokes me to rise. That is, Mr Speaker, that I do not think we have here features of an impartial court. What I think we have here in the hon Member is features of innate colonialism. The hon Members bear their chests and pretend to be bold advocates of decolonisation which presumably means the transfer of powers to the democratically-elected Government of Gibraltar which today is presided by me and tomorrow will be presided by someone else. Whenever we bring legislation to this House that gives to Gibraltar Ministers the powers that Ministers have in any other European democracy the hon Members raise the same colonialistic point about the fact that Ministers have powers. They must decide once and for all whether they regard the Governor as some sort of security blanket or whether they are interested in decolonisation. But they cannot have both. They cannot occupy all sides of the political spectrum at the same time. It is not possible and even less credible. The powers that the hon Member is lamenting, that the Chief Minister now enjoys, are presently exercised by the Governor acting on behalf of the

Government, by the way, because these are defined domestic matters. I would have thought that these are provisions that the hon Member would welcome given all that he says about his desire for constitutional change and for constitutional advancement. Is it really the hon Member's position that he does not think that in the democracy of Gibraltar the elected Ministers should be trusted to the same extent as elected Ministers in other countries because it is not an impartial political court. I suggest that the hon Member dwells on that thought and gives a little bit more careful consideration to some of the submissions that he makes in this House.

HON J J BOSSANO:

Mr Speaker, the reaction of the Chief Minister is total rubbish because he gave the game away when he said that this is a defined domestic matter and in a defined domestic matter it is not the Governor acting as the Governor but the Governor acting as the executive officer of the Minister. Therefore, with the Ordinance that is being replaced the difference is that in the Ordinance that is being replaced it is the Minister with responsibility for this particular Ordinance in his Ministerial responsibility that has to approve or disapprove the planning scheme. I can assure the House that in the last planning scheme that was published the Governor had no involvement in it and it was done by the Minister with responsibility for economic development and the Chief Minister did not have in the law the right to overrule him. Why is it that the Chief Minister should want to have a Commission chaired by his Minister to whom he gives the job and tells him to prepare a planning scheme, go public, invite applications and then when all that process is over, come to me and I have got the right to say whether he approves or disapproves it or ask him to do it again. In any case, he has also the right to change his mind as to whatever is decided. We thought that if what we want to do is for the avoidance of doubt put "Minister" instead of "Governor" or "Government" instead of "Governor" which we have done on numerous occasions. We did it before and the process has continued and let me say the only reason why there was a need to do it was because regrettably the

doubt was raised. Before the doubt had been raised there would have been no need to do it but I can assure the House that we had at one stage the argument being put that even after legislation had been approved by this House and even after the assent had been given the commencement date which generally says shall be on a date appointed by the Governor did not mean the commencement date determined by the elected Government but the commencement date determined by somebody in the Foreign Office which is absurd because as far as we were concerned there was no issue of principle involved. The only logic to having a commencement date is that one does not want to commence the legislation before the facilities are in place which the legislation requires should be there. If we see nothing colonial or anti colonial or decolonisation or modernisation..... but we had to go back and say "well look if you are going to argue that 'Governor' does not mean as has been interpreted until now since the year dot that it is the Governor acting on the advice of either the Chief Minister or the pertinent Minister in a defined domestic matter....." and there may be occasions when there are grey areas and those grey areas have to be solved but certainly this is not one of these grey areas so as far as we are concerned we are looking at the legislation on the basis that where the old Ordinance says that the Commission, for example, shall with a view to the promotion of health and safety convenience physical economic and general welfare of the community and the preparation of planning schemes for the physical development of the existing and such other areas as the Governor may direct, here until we pass this new Bill it is not that the Governor is able to get out of bed one morning and say "I now want the planning scheme done about my back garden" and he instructs the Commission to do it. As far as I am concerned, this has always meant the Government deciding they want to do a development of, say, in Rosia and they want the Commission to produce a planning scheme for that area or they want something which was done the last time where, really, to be honest, the political input was minimal, it was really the people with knowledge of that particular profession that suggested that one area should be for leisure activities and another area should be for residential and another area should be for industrial

development. Certainly, there was no input from the Governor and what we have here is the odd situation in the new legislation for which no explanation has been offered. The Minister has skipped entirely over his removal from the law and his replacement because if we accept that the Governor in the law as it stands now means the Governor on the advice of the Minister for the Environment who, under the Constitution, has the responsibility for this defined domestic matters it means that if we do not change the law the Governor, that is, the Minister tells the Commission "prepare a planning scheme for me". We are now saying it will not be his decision to ask the Commission to prepare a planning scheme. It will be the decision of the Chief Minister. There may be a very good reason for the Chief Minister wanting to claw back that responsibility not from the imperial power but from one of his Colleagues but I would have thought that the Chief Minister had enough on his plate already without wanting as well to get involved in approving or disapproving planning schemes or problems with the Commission. We thought it was consistent with the fact that the Explanatory Memorandum says that the main changes are in the part dealing with the building control and private development that is what we are being told.

In the Explanatory Memorandum it says the Bill amends and consolidates the Town Planning Ordinance. Principal amendments are contained in Part 4 of the Bill. The Minister, in moving the Bill, has concentrated on the amendments in Part 4. The amendment in Part 3 has been totally skipped over. My Colleague was drawing attention to the fact that the amendment in Part 3, he had said in his contribution that we knew that the Governor there did not mean the Governor in the exercise of his responsibility on behalf of the United Kingdom but as the Head Civil Servant of the Elected Government. Therefore, the Governor really has meant and has operated and will continue to operate until this new Bill comes in as the Minister for the Environment and the change that is proposed for which no explanation has been offered..... the fact that we dare to ask a question is not evidence that we want to be all things to all men and cover all the spectrum of political opinion. That spectrum is

already totally occupied by the Chief Minister. There is no room left. If only he would leave a little corner we would be grateful so that we are allowed to question him in the Parliament of Gibraltar, which is supposed to have the same privileges as every other Parliament which we certainly do not want to suppress so that we can question. Is there some explanation for this? Is there a need to have everything concentrating on the Chief Minister when there is a perfectly competent Minister able to do it? That is the question and the fact that by doing that my Colleague knew full well what he was letting himself in for is not a reflection of the fact that we want to retain our colonial masters. What we do not want is to have a colonial master in Irish Town. That is what we do not want. We do not want to replace the one in London by the one here and therefore we feel that we are being perfectly in keeping with Parliamentary tradition to say why is it before we vote on the replacement of the Minister for the Environment by the Chief Minister as the person that directs the Commission as to what the Commission should be doing. If there is a simple, adequate explanation for it, which is convincing, then that is fine. Let us have it. If there is not then we think the schedule of responsibilities and we would have thought, Mr Speaker, that are published when the Ministerial responsibilities are dished out.

This is a Bill that is being brought by the Minister which has ministerial responsibility for this area. The present law says that ministerial responsibility makes him the person who has the last word on the planning schemes. The section of the law to which my hon Friend directed himself was section 9 in the new Bill which said "submission of schemes to the Chief Minister." Therefore, the Commission gets told by the Chief Minister "do me a planning scheme" and the Commission is required by law to do the planning scheme that he has been asked to do. It then proceeds to consult all the experts in Gibraltar and to publicise what it is doing and to listen to all the objections. When he has done all his work, it then gets the scheme which it has been asked to do, produces the schedule of the objections that there have been to the scheme that he was asked to do and then, additionally, shows what amendments it does to the scheme as a result of those objections. Then the original scheme, plus the

amendments plus the objections, are all put on the desk of the Chief Minister who approves it or refuses to approve it, if one hears half the stories probably the second, or sends it back to the Commission and says "do it again". In that planning scheme, if we look at the old Ordinance all those things are there but they are not there for His Excellency the Governor to do because it would be ridiculous if the elected Government found itself being told by the Governor "I do not agree with you, do it again". In fact, where at the moment the law says that the planning scheme may be approved by the Governor, the Governor in this case is the Governor acting on the judgement, the policy, the decision of the Minister. If in fact it was an anti-colonial measure as the hon Member has claimed it would mean that until we pass this, His Excellency the Governor is able to overrule the elected Government on planning schemes and that is not true, that has never happened. That is not what the law says so I regret to say that the one who does not understand the law being brought to the House is not my Colleague but in fact the Chief Minister and here we are giving him unlimited powers and he does not even understand the law that is giving the powers.

HON CHIEF MINISTER:

The hon Member appears not to have understood that when I have accused his Colleague of colonialism is not because he thinks that it should be the Minister or the Chief Minister that takes over the Governor's powers, or whether it should be replaced from "Governor" to "Chief Minister" but that he is suspicious he formulates in his complaint on the basis of an impartial political court. If the hon Member thinks that the threat here is political, the threat is the same whether it is the Chief Minister or the Minister.

HON J J BOSSANO:

Well, if it is on that point, let me say that the Chief Minister has misunderstood because the tribunal which is not dealing with this part is dealing with building control was where he was talking about the composition. There is an argument that, the Chief

Minister may be right, but if what we are talking about is do we want a tribunal instead of the Governor then the answer is yes, OK we want a tribunal instead of the Governor. He said that, he said it was an improvement but the composition of the tribunal might not go far enough. The point that I am making and the point which has not been dealt with and the point which my Colleague mentioned at the beginning, before he moved to the tribunal, was in relation to planning schemes. Is it that in relation to planning schemes there is a positive policy decision that they want this to be done by the Chief Minister which frankly I would not have thought was in the interests of the position. I would have thought there was enough work to do without having to take this on as well. It is a peculiar situation I would have thought for any Minister to find himself defending one day a scheme and then the next day having the rug taken from under his feet which the provision is there for. That is the point that we are trying to make. If what we are saying makes sense then I would have thought it is a good reflection that we are mature enough to be a Parliament, when we make sensible points it can be taken on board. I think the point of the tribunal is a different issue but I am only addressing this Parliament.

HON K AZOPARDI:

Mr Speaker, in the first place I would like to say that the hon Member does not realise how happy he makes me when he considers me a competent Minister. I think he should say that more often to the electorate. I am obliged.

Mr Speaker, I think perhaps the hon Members are focusing too much on the titles that are being used and perhaps do not understand the procedure itself. The reason I skipped over it, to use the phrase that the hon Member just used in his contribution, is because I thought it was obvious. I did not think that this was creating any new ground. I did not think it was creating a new procedure. I did not think it was a cataclysmic issue that was being introduced into the Ordinance. The principal amendments are as I said in Part 4 and these are just amendments to modify and perfect an existing part itself. If it needs to be explained, let

me explain why these amendments are being made and let me make clear, initially as well at the outset, that these amendments are being made because they are departmentally driven by my Department and approved by me. The Chief Minister is not consulted on the drafting of this legislation and I will explain to the hon Member why these amendments are necessary. The current provisions allow for a planning scheme to be called for by the Governor. The new Bill does not say that the planning scheme will be called for by the Governor or by the Chief Minister. The new Bill says that the planning scheme will be called for by the Government and I think the hon Member when he referred to Chief Minister in the sense is the Chief Minister going to decide when the planning scheme and what, I think the hon Member perhaps misread the relevant section. Let me draw his attention to the section. The relevant section is section 4 which says "The Commission shall, with a view to the promotion of the health et cetera, undertake the preparation of planning schemes for the physical development of such areas as the Government may direct", not the Chief Minister. That is the first point. The second point which the Hon Mr Gabay raised and the Leader of the Opposition reiterated at length is the issue of the powers of the Chief Minister under section 10. Section 10 of the current Ordinance says "upon submission of a planning scheme the Governor may, either; (a) approve it; (b) refuse to approve it; or (c) refer it to the Commission for further consideration and amendment." Section 10 of the new Bill says "upon submission of a planning scheme the Chief Minister may (a) approve it; (b) refuse to approve it; or (c) refer it to the Commission for further consideration and amendment". It is precisely in the same terms and the only difference there is the substitution of the Governor for the Chief Minister. The Government, under Section 4, call for planning schemes to be devised. A planning scheme is devised and then discussed under Section 5 to Section 8 of the present Ordinance, after the Government have decided that a planning scheme should be devised under Section 5(2)(8) of the present Ordinance as indeed is the case with the new Ordinance, the Commission presides over the devising of this planning scheme and discusses it and then makes sure it gets exhibited and then receives the comments and then proposes amendments and then

decides to the point of whether it should be finally approved. The current section says the Governor will decide whether to approve it or not and the Governor means the Government. Fine. But the reality of the position, and this is where the initial draft of the legislation said in section 10 the Minister instead of the Chief Minister. All they did was switch the position. When I discussed it with the Legislation Unit I said to them I thought it was a very strange position to be in. Here I am chairing the Commission that takes on board the Government's request for a planning scheme, that then makes sure it gets devised, that then supervises the procedure, that then supervises the comments received from the public, that then makes sure that the amendments are made and then I take off my hat as Chairman of the Commission, I submit the scheme to myself and then I make sure I refuse it or I approve it. I would have to be stupid in the extreme to refuse to approve a scheme I have presided over. In that context I suggested to the Legislation Unit and it was my suggestion that it should read "the Chief Minister" because then it would make clear the separation of the issue and then, of course, if the Chief Minister acts on the advice, because of course he is the head of the Elected Government and he will make sure that he approves the scheme that the Commission has been presiding over because at the end of the day it is chaired by one of his Ministers, but it makes clear that it is not an absurd situation which it would be if one did not amend it in the manner that I am suggesting. This is why the amendment is being made.

I do not think any other point of substance has been raised by the Opposition Members. The only other issue was that the Hon Mr Gabay said that in making the point he was suggesting that that led to the Chief Minister having wide powers in relation to planning, nothing of the sort. Planning schemes are once every five years, if at all. Nothing to do with the normal run of the mill planning applications and they are guidelines under section 15. It makes clear that they are guidelines and it has nothing to do with that. The Chief Minister has no function in the approval or disapproval of planning permits. I decide with the Commission whether they get approved or not and I assure the hon Member that not only does the Chief Minister not have a role in the

planning process but that is the crux of the amendment. The amendment is to remove a potential absurdity rather than to allow it which would be the case if we had not introduced the word "Minister" and I hope the hon Member understands the purpose of the amendment.

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 be taken today.

Question put. Agreed to.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

I have the honour to move that the House should resolve itself into Committee to consider The Town Planning Bill 1999, clause by clause:

Clauses 1 to 48, Schedules 1 and 2 and the Long Title were agreed to and stood part of the Bill.

THIRD READING

HON ATTORNEY-GENERAL:

I have the honour to report that the Town Planning Bill 1999 has been considered in Committee and agreed to without amendments. I now move that it be read a third time and passed, also the Public Finance (Control and Audit) (Amendment) Bill 1999 and the Medical and Health (Amendment) Bill 1999.

Question put. Agreed to.

The Bills were read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that the House do now adjourn to Friday 26th November 1999 at 3 o'clock in the afternoon.

Question put. Agreed to.

The adjournment of the House was taken at 4.35pm on Thursday 18th November 1999.

FRIDAY 26TH NOVEMBER 1999

The House resumed at 3.10pm.

PRESENT:

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

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 QC - Attorney-General

The Hon T J Bristow - Financial and Development Secretary

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition

The Hon J L Baldachino

The Hon Miss M I Montegriffo

The Hon A J Isola

The Hon J J Gabay

The Hon J C Perez

The Hon Dr J J Garcia

IN ATTENDANCE:

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

DOCUMENTS LAID

The Hon the Attorney-General moved under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the laying of a document on the Table.

Question put. Agreed to.

The Hon the Attorney-General laid on the Table the Revision of the Laws (Supplement No.11) Order 1999.

Ordered to lie.

MOTIONS

HON CHIEF MINISTER:

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

Question put. Agreed to.

HON CHIEF MINISTER:

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

"That this House approves by resolution the making of the Federal Republic of Yugoslavia (Supply, Sale and Export of Petroleum and Petroleum Products) (Penalties and Licences) Regulations 1999".

Mr Speaker, these Regulations give practical effect to Council Regulation 2111 of 4th October 1999 prohibiting the sale, supply and export of petroleum and certain petroleum products to certain parts of the Federal Republic of Yugoslavia and repealing Regulation 900/1999. By way of some background, this House will recall that the Council of the European Union imposed a petroleum embargo against the Federal Republic of Yugoslavia through its Common Position 1999/273 and its adoption of Regulation 900/1999. This House approved on 7th July 1999 the Federal Republic of Yugoslavia (Supply, Sale and Export of Petroleum and Petroleum Products) Regulations 1999 which, amongst other things, gave practical effect to that EC Regulation. To show support for the democratically-elected Government of Montenegro and in accordance with Kosovo's special status under United Nations Security Council Resolution 1244 the Council of the European Union has adopted Common Position 1999/604 which amends Common Position Paper 273/1999 and provides that the petroleum embargo against the Federal Republic of Yugoslavia should not apply to the sale and supply of such products to the Republic of Montenegro and the Province of

Kosovo for the purposes of any activity carried on or operated from Kosovo or Montenegro.

Mr Speaker, Common Position 604/1999 was implemented by Council Regulation 2111/1999. This regulation reiterates the general ban on the sale and supply of petroleum and petroleum products to the Federal Republic of Yugoslavia with limited exemptions for sale, supply or export of petroleum and petroleum products for the use of diplomatic and consular missions of Member States, for the use of an international military peacekeeping presence and for strictly humanitarian purposes. The petroleum and petroleum products are listed in Annex 1 of the Council Regulation. It also provides that these products may be sold, supplied or exported from the Community to Montenegro or Kosovo but shall not leave the territory of Montenegro or Kosovo for any destination elsewhere in the Federal Republic, for example, the Republic of Serbia.

Mr Speaker, there are therefore three main reasons for bringing these regulations to the House. Firstly, they make it an offence to infringe the prohibition in the new EC Regulation and specifies the penalties to be imposed. Secondly, they provide for the licensing of supply, sale and export and participation in relation activity in accordance with the regulations provisions and, thirdly, they make provisions for the enforcement of the EC Regulations.

These regulations before the House also revoke the Federal Republic of Yugoslavia (Supply, Sale and Export of Petroleum Products) Regulations 1999 which we approved in this House on 7th July. Mr Speaker, in summary therefore, the principal effect of these regulations is that they do in respect of what we did in July, the same thing, and the new regulations of the EC are, basically, to exempt Kosovo and Montenegro from the effect of the total ban on petroleum sales to Yugoslavia which is what we approved in July. I commend the motion to the House.

Question proposed.

HON J J BOSSANO:

Mr Speaker, this is the fourth occasion on which the House is being asked to vote on a motion approving regulations which give effect in Gibraltar to obligations which are directly applicable because the regulation in question says that it applies throughout all the territories of the European Union and, of course, Gibraltar forms part of that territory. In the one that we approved a week ago I drew attention at the time that the motion was being debated to the fact that the Member State United Kingdom, in the case of the regulations relating to Indonesia, had the Export Policy Unit of the Department of Trade and Industry, King's Gate House, as the relevant competent authority. Therefore, I put it to the House that the regulations we were approving were ultra vires since we were purporting in this House to give approval to a regulation which empowered the Collector of Customs to do something which, according to the European Union primary legislation, could only be done by those entities that were listed in the Annex as competent authorities. The House was informed by the Government that this was a matter that had been raised with the United Kingdom who was not clear then whether they had actually yet done anything about getting us included or not. I also drew attention to the fact that on the first occasion when we had a motion brought to the House to approve such Regulations which was in June, there had been a provision in the regulation we are now repealing and which has been repealed in the European Union by Regulation 2111/1999, there was a provision for the Member States to inform the Commission of the competent authorities so that the Commission could publish that list and they did so on 26th May in Commission Regulation No.1084/1999. Regulation 1084/1999 states "The list of competent authorities referred to in Article 2 of Council Regulation 900 shall be established as indicated in the Annex hereto". That Annex shows that in the case of the United Kingdom it is the same Export Policy Unit of the Department of Trade and Industry, King's Gate House. I am not clear whether in fact the repeal of Regulation 900/1999 carries with it the repeal of Regulation 1084/1999 since that refers back to 900. It is not clear I think from reading the EC Regulation

which has been published by the Government whether it means that all the competent authorities have to be resubmitted.

The regulation in respect of which we are now debating this motion does make provision for the list of competent authorities to be amended by the Member State. This is in Article 7 where it says "The Commission shall establish the list of competent authorities referred to in Articles 2 and 3 on the basis of the relevant information provided by the Member State. The Commission shall publish this list and any changes to it in the Official Journal of the European Communities". I think we must insist that on this occasion we do not get left out again, having been left out already on three occasions, particularly since the European Union has repealed the one of last May when we were not included. Perhaps even more important is that in the Gazette that has been circulated there is a model of the authorisation document of EC competent authorities referred to in Article 3(1). This is on pages 10 and 11. I know this is a theoretical situation and I know that we are not likely to see it in practice, but nevertheless I think it is an important issue of principle that is at stake and we should not miss an opportunity like this because in fact the form says "Competent Authority, Name, Full Address and Country". Since both sides of the House are agreed that it is quite legitimate to call ourselves a country, I would expect that the Collector of Customs, in keeping with the wishes of the House, if ever he had to sign a form, would put his country as "Gibraltar" and not as "United Kingdom" and would describe himself as the "Collector of Customs" and not the "Export Policy Unit of the Department of Trade and Industry". I believe that the position is, at least that is the indication that was given, that the United Kingdom is aware that this is what we expect. I believe that is the correct position in law anyway. I believe that if the law says a competent authority has to be somebody listed and we are not listed, if it should happen that somebody should apply for such a licence, they would need to know that the licence that they are getting is in fact legally enforceable. It would seem to me that if the person presuming to issue such a licence is not one authorised by listing in the Annex, then the authority to export the goods mentioned in the EC Regulation 2111/1999 could be

challenged. Therefore, I am proposing to move an amendment to the motion and the amendment is that we delete the full stop at the end of the sentence in the motion and replace it by a comma and add the following words: "with effect from the date of the inclusion of the Collector of Customs as the authorised competent authority of the European Community for Gibraltar, in accordance with the relevant provisions of Council Regulation 2111/1999". Then we would be happy to support the motion and support His Excellency's regulation under the relevant provisions of the European Communities Ordinance 1972 and be confident that we would not be placing a responsibility on the Collector of Customs which appears on the surface to be putting him outside the law. I commend the amendment to the House.

Question proposed.

HON CHIEF MINISTER:

Mr Speaker, the Government do not support the amendment because we think it is based on a misconception of the Leader of the Opposition's part. He is right in what he said the last time we met on the Indonesian Regulation. The Indonesian Regulation required that before the authority was entitled to give an exemption licence that authority had to be registered with the Commission. Therefore, the hon Member will recall that I conceded to him that he may well be right in questioning whether without being on the list of authorities for Indonesian purposes, the Collector of Customs could lawfully give an exemption licence. But he is wrong in transferring that thinking and that argument to the Yugoslavia case because the Yugoslavia Regulation does not, as the Indonesian one did, say that only listed competent authorities are entitled to give exemptions. It leaves it entirely to the Member State to appoint whatever competent authority they want and the only obligation is to notify the Commission of what that competent authority is. Unlike the Indonesian Regulation it does not go on to imply or state that unless and until one is notified or listed then one is incompetent to give an exemption licence. The hon Member will see that unlike the Indonesian Regulation this Yugoslavia Regulation, the same as the previous

Yugoslavia Regulation, speaks only, as he has quite rightly pointed out, of the Commission establishing a list. This is by way of notification, not a list as in the case of Indonesia where the Regulation made it clear that only the listed competent authorities could exempt. If the hon Member had moved his amendment when we debated the Indonesian Regulation, I am not saying that we would have supported it then but at least the legal argument that he has used to justify his amendment would at least have been very probably correct. I do not believe it is very probably correct in this case. Indeed, I believe it is incorrect on a proper reading of this regulation which is drafted in very different terms to the Indonesian Regulation to which he has alluded. But the hon Member is right in saying that this is an important point of principle, this question of competent authorities and because it is an important point of principle we have wished to put in there the Collector of Customs from the very first day. When we appointed the Collector of Customs in the first Yugoslavia Regulation, which I think was in July, we immediately, spotting this listing requirement, wrote to the Deputy Governor requiring him to see to it that Her Majesty's Government complied with their obligation under the regulation to notify the Commission of the fact that in Gibraltar the competent authority was the Collector of Customs. I cannot say whether that has occurred but certainly I can tell the House that the Gibraltar Government have requested it.

The hon Member will also recall that when he raised this issue relating to the first Yugoslavia Regulation, when we debated the Indonesian Regulation last time we met, he made reference to the fact that we were not in the published list. Again, today, he has spoken of being left out of the first Yugoslavia list. The hon Member will recall that I pointed out to him that it was not really a case in the event of saying that they would not have wanted to leave us out if it had been required, but in the event I did not think it was a case of being left out of the list because as the hon Member has just said, the Commission published the list on 26th May, whereas we did not actually nominate our competent authority until July. Therefore, in May there was no Gibraltar competent authority. We had not yet done this regulation. We had not yet nominated a competent authority and therefore it was

not a question of being left out of the May list that was published. It was a question of there not being anything to include in respect of Gibraltar in the May list. I simply make that point to emphasise to the hon Member that this is not on the facts of this case a question of being excluded but, however, the UK's willingness to notify our competence will be tested when we repeat what we did the first time round, inform them of the appointment of the Collector of Customs as its competent authority, which remember, has been signed by the Deputy Governor and pointing out the Member State's obligation to inform the Commission for listing purposes and obviously the United Kingdom will either notify as required or omit to notify as required and be in breach of its obligations. I just want to re-emphasise to the hon Member therefore that this is not a case such as the Indonesian Regulation in which there was a question of potential ultra vires because unlike the Indonesian Regulation the language of this regulation is markedly different and does not require the registration, in other words, the vires. The right of the competent authority to give the exemption licence does not depend on first having been annexed or having been included in a list or an annex of the regulation. Indeed, the hon Member will correct me if I am wrong but I think in the case of the Indonesian Regulation the competent authorities were actually listed in an annex attached to the Regulation itself. It was not really a question of notifying in that case, it was the fact that the regulation, when it first came out, already had the list of competent authorities before it even reached Gibraltar for our actions and that is the list that we were excluded from. Therefore, Mr Speaker, I think that certainly as far as the Government are concerned, whether or not the United Kingdom complies with its obligation to notify the Commission of the appointment of the Collector of Customs, that does not affect the lawfulness of any exemption that the Collector of Customs may give in the case of the Yugoslavia Regulations and therefore there is no question of him operating in this case outside of the law.

HON J J BOSSANO:

Mr Speaker, obviously we regret that the amendment that I have moved is going to be defeated by the Government and we will therefore be voting against the original unamended motion as we have voted against the previous ones. Let me say that I have heard what the Chief Minister has had to say about the significance of the difference in wording. I cannot say that it is obvious to me that the distinction he is trying to draw exists. In the original regulation, the one from which as I have said we were left out of and the point of course is that the original regulation on Sanctions Against Yugoslavia was in April, which was Regulation 900 and that came out and made a provision which stated in Article 2(2) that the competent authorities of a Member State which intend to authorise, supply or export in accordance with paragraph 1(b) which was giving the discretion to the Member State to permit something that would otherwise not be permitted had to notify the competent authorities of other Member States and the Commission on the grounds with which they intended to authorise the sale but it did not say who these competent authorities were and it did not list them.

In Article 6 it says "the Commission shall establish the list of competent authorities referred to in Article 2 above on the basis of the relevant information provided by the Member States". It would seem that between April and May the Member State provided the relevant information which permitted the listing to be published on the 26th May. I put it to the House, Mr Speaker, that if Article 6 says "the Commission shall establish the list of competent authorities referred to in Article 2" and we are not in that list, then we cannot be one of the competent authorities referred to in Article 2. That is the point that I am making. The Collector of Customs was made the competent authority subsequent to the publication of that list and therefore ought to have been added to that list when he was made. There was nothing to have stopped it being done earlier but in any case the Commission has to do two things, one is to establish the list on the information given by the Member State and then to publish the list and any changes to it in the Official Journal. The provision of Regulation 900 has now

been replaced by this regulation, which has repealed the previous one. I put it to the House that the mechanism that was in the previous one is the mechanism that is being reproduced in this one.

In Article 7, it says "the Commission shall establish the list of competent authorities referred to in Articles 2 and 3(1) on the basis of the relevant information provided by the Member State". It is an identical provision to the one that was there last April, word for word. If in fact we are saying that in the case of the list that was produced under the provisions of Article 6 of Regulation 900/1999 which was published on the 26th May our Collector was not included because the naming of the Collector as the competent authority was subsequent to the 26th May, then logically since by now the United Kingdom knows who the competent authority is, there is nothing to have stopped the United Kingdom giving the information to the Commission so that the Commission could include it in the list of competent authorities established by them in order to be able to carry out what the Regulation says. Article 7 says "the Commission shall establish the list referred to in Article 2". Article 2 says "notwithstanding the provision of Article 1, the competent authorities may authorise the sale, export and so forth". The competent authorities which intend to authorise clearly are the ones established by Article 7. They cannot be anybody else because they are supposed to look at that list and inform each other of what their intentions are and what we are doing is we are saying that for the purpose of Article 2 in the case of Gibraltar we say in our own regulation, that is in the regulation that the House is approving today, we say "in the case of Gibraltar the power to authorise certain departures from the norm are going to be exercised by the Collector of Customs". We are agreed that that means that the Collector of Customs is the relevant competent authority for Gibraltar. But that has to be established by the Commission on the basis of the information provided by the Member State. It seems to me that on the reading of it there is no way that anybody else can stop this. There is nothing here that says it requires unanimity. It does not say the Spaniards may veto this because this is information supplied by each Member State. If the Kingdom of Spain wanted

to make the competent authority in the Member State Spain the Mayor of La Linea it would appear that they are entirely free to do so and nobody would be able to object. Therefore, since each Member State is able to nominate its competent authority as it sees fit, it might not have been possible to do it in May because we took action in June but it is certainly possible to have done it by now. The reason why the list is there in the case of Indonesia is because in the case of Indonesia all that they did was they reproduced the same list that was there since May for Yugoslavia. They are exactly the same in all the Member States. It is quite obvious that the competent authorities that the Commission has established for sanctions not surprisingly if there is in the United Kingdom in the case of the Indonesian Regulation or in the case of the list published on 26th May it is the Export Department of the DTI, it is obvious that unless there is a clear case for doing something different and let me say that apart from the Export Policy Unit of the Department of Trade and Industry, we have had another. We are talking here about three of the four but there is the fourth one whereas the Administrative Secretary is in the regulation regarding financial transactions and investments in the Federal Republic of Yugoslavia, there it is the Sanctions Department of the Bank of England that is the relevant competent authority for the Member State UK. That, I would have thought, was even more important for us to establish that we have got in the area of things related with banking and financial transactions, constitutional independence from the Bank of England in the United Kingdom. Therefore, it seems to me we are missing an opportunity, Mr Speaker, to send a message back to London that if they expect us to fall in with our obligations then they have got to defend and honour our entitlement to our right and to recognition which is so important in so many respects to everything that we are facing in the European Union and therefore I regret that the Government are not supporting it.

Question put on the motion, as amended. The House divided.

For the Ayes: The Hon J L Baldachino
 The Hon J J Bossano
 The Hon J Gabay
 The Hon Dr J J Garcia
 The Hon A Isola
 The Hon Miss M I Montegriffo
 The Hon J C Perez

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

The amendment was defeated.

HON CHIEF MINISTER:

I hope not to say very much on the motion, Mr Speaker. I am surprised that the hon Member, with his usual eye for detail is unable to detect the difference between the Yugoslavia Regulation and the Indonesian Regulation. I have tried in as clear and simple a language as I could to point it out to him. Clearly, either I have failed or he would not accept whatever I might have said to him but I could have another go because I think it is an important point.

Let me just point to the hon Member what the difference is again. This time by reference to the text. He says that on a reading of the text he does not think that the distinction that I have sought to draw between the two regulations exist. The Indonesian Regulation says at Article 1(2) "The competent authorities of the Member States listed in Annex 2 may authorise.....". On any

interpretation of the English language therefore if one is not listed in Annex 2 one may not authorise. That is why I conceded to the hon Gentleman that he was probably right when he said in relation to this Indonesian Regulation that given that the Collector of Customs was not listed in Annex 2 attached to that very same regulation, that the points that he was making on that occasion were probably correct. If one has a legal provision that says "the competent authority of the Member States listed in Annex 2 may authorise exemptions", then if one is a competent authority that is not listed in Annex 2 axiomatically one may not authorise exemptions. That is the Indonesian situation. The Yugoslavia Regulation has no such provision. The Yugoslavia Regulation simply says that the competent authorities in the Member State, without saying the ones listed in Annex 2 are the ones appointed by whoever shall have the right to exempt. We have lawfully appointed the Collector of Customs as our competent authority. It is true that the Yugoslavia Regulation says it in terms which mean something very different to the Indonesian Regulation and that is the point that the hon Member chooses not to grasp because I cannot believe that he does not grasp it in fact. "The Commission shall establish the list of competent authorities related in Article 2 and Article 3(1) on the basis of the relevant information provided". In other words, in the case of the Yugoslavia Regulation it is just information, namely, the identity of the competent authority that has to be notified to the Commission who then makes a convenient list for the purposes that he quite rightly said in his address a moment ago, for the purposes of informing each other. Whereas, in the case of the Indonesian Regulations, the legal effect of the language used is not just that one has to communicate the identity of one's competent authority to be listed so that all the other countries can know who the competent authority is, but the language used in the Indonesian Regulation is in terms that make it a condition of the power to give exemptions that one's name shall appear on the list annexed to the end of the document. I am sure that the hon Member, never mind on legal grounds, on purely semantic grounds, the hon Member surely must recognise the difference. Whereas, there is an obligation to communicate the information to the Commission in both cases, in the Indonesian case, the consequences of not being listed is that

one cannot give the exemption but in the Yugoslavia case the consequences of not being listed is not that one cannot give exemptions and since the hon Member was raising arguments about vires and whether any of the exemptions so given would be lawful or unlawful, just as I conceded to him that he was probably right when he made the point in the Indonesian case, I must now tell him that I think he is wrong in applying the same argument to the Yugoslavia case because the language in question is significantly different. The difference is precisely to the effect that we are discussing.

I agree with the hon Gentleman that there is an obligation now to notify under the Yugoslavia Regulations, which as I said before repeat what we did, we detected this and for that reason we detected it quickly and moved because of course it is important to get the United Kingdom to show a willingness to communicate our competent authorities to the Commission. It would be completely unacceptable if the United Kingdom shied away from doing that for fear of stirring the hornets' nest, so to speak. That is why we pointed out to the United Kingdom that they had this obligation on the case of the Yugoslavia Regulation to notify and we will do that again. We will see in a few months time whether the United Kingdom..... we are not going to be so lucky that all these Yugoslavia Regulations are going to be systematically amended so that they always with the balls in the air, the need to notify them are actually crystallised. But I will be happy to keep the hon Member informed of whether we get confirmation that our request for the notification to the Commission of the appointment of our competent authority has actually been consummated or not.

Question put on the motion. The House divided.

For the Ayes:

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

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

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

The motion was carried.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

I have the honour to move that the House should resolve itself into Committee to consider the Maritime Security Bill, clause by clause.

THE MARITIME SECURITY ORDINANCE

Clause 1

HON CHIEF MINISTER:

I move the amendments set out at paragraphs (a) to (d) of my letter to Mr Speaker dated 18th November 1999, as follows:

In 1(3) – insert the words “other than a police officer” after the words “appointed person” means a person”; also after the words “authorised person” means a person” insert the words “other than a police officer”.

In 1(6) – delete the word “who” after the words “. the Commissioner” and replace by the words “by the Governor acting upon a request from the Minister and the Commissioner”;

Add New Clause 1(10) – “The exercise of the Minister’s functions under Part III of this Ordinance shall not displace or prejudice the Governor’s right to give directions to any person as he considers appropriate with respect to those functions in exercise of his constitutional responsibilities for internal security. The Governor shall be kept fully informed of all matters under Part III affecting internal security”.

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

Clauses 2 to 10 were agreed to and stood part of the Bill.

Clause 11

HON J J BOSSANO:

In Clause 11(1) Searches in the Harbour Area, it says “no person shall exercise any power conferred by this part to search any person unless authorised by the Minister to exercise such a power”. Given the fact that in other areas we have said “no person” excludes a Police Officer. It says for this purpose “the Minister may secure searches to which this section applies to be carried out by authorised persons.” Presumably, independent of the searches that the Minister authorises, the Police have also got the power. But if there is a clause that says “no person shall exercise any power unless authorised by the Minister” does it mean that the Police who are authorised by somebody else need to require a second authorisation by the Minister or not?

HON CHIEF MINISTER:

Mr Chairman, it should not mean that. Specifically the intention is that the Minister should not be at liberty to interfere with the exercise by the Police of their internal security powers and rights as they may be directed by His Excellency the Governor. Therefore, the scheme of the Bill is that there is a definition of authorised person which can be found in page 67 of the Bill and that an authorised person means a person other than a Police

Officer. Certainly, if the hon Member gives me just a few seconds to think on my feet that could read “no person other than a Police Officer shall exercise any power conferred by this power of search unless authorised by the Minister in exercise of such power.” I would be quite happy to move such an amendment or to support it if he wishes to move it since the hon Member has raised it.

HON J J BOSSANO:

I think it would be preferable to have that amendment for the sake of clarity because it does not say “no authorised person” it says “no person”. I move then the insertion of the words “other than a Police Officer” after the word “person” in the first line of sub-section (11) of Section 11.

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

Clauses 12 and 13 were agreed to and stood part of the Bill.

Clause 14

HON CHIEF MINISTER:

In Clause 14(8) – delete the words “. . . .may, at the request of the Governor,” and replace by the word “shall”, and at the end of the clause insert the words “as shall relate to matters of internal security”.

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

Clauses 15 and 16 were agreed to and stood part of the Bill.

Clause 17

HON CHIEF MINISTER:

In Clause 17(1) – delete the word “Minister” and replace by the words “Captain of the Port” and delete the words “the Captain of the Port or to” after the words “. . . a direction in writing . . .”.

In Clause 17(2) – delete the word “Minister” whenever it appears in the subclause and replace by the words “Captain of the Port”.

In Clause 17(4)(b) – delete the words “. . . .to the Captain of the Port”;

In Clause 17(7) – delete the word “Minister” and replace by the words “Captain of the Port”;

In Clause 17(8) – delete the words “. . . ., other than the Captain of the Port,”.

Clause 17, as amended, was agreed to and stood part of the Bill.

Clauses 18 to 28 were agreed to and stood part of the Bill.

Clause 29

HON CHIEF MINISTER:

In Clause 29(1) delete the word “Minister” wherever it appears in the subclause and replace by the words “Captain of the Port”;

In Clauses 29(2) and 29(3) delete the word “Minister” and replace by the words “Captain of the Port”;

Clause 29, as amended, was agreed to and stood part of the Bill.

Clauses 30 to 37 were agreed to and stood part of the Bill.

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

THIRD READING

HON ATTORNEY-GENERAL:

I have the honour to report that the Maritime Security Bill 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. Agreed to.

The Bill was read a third time and passed.

PRIVATE MEMBERS' MOTION

HON J J BOSSANO:

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

"This House –

- (1) Reaffirms the view it has always held that the people of Gibraltar have and are entitled to exercise the inalienable right to self-determination as provided for by the Charter and Resolutions of the United Nations.
- (2) Notes that the United Kingdom holds the view that the right of the Gibraltarians to self-determination is constrained by the provisions of the Treaty of Utrecht.
- (3) Notes that the Kingdom of Spain holds the view that the provisions of the Treaty of Utrecht deprive Gibraltarians of the right to self-determination.
- (4) Whilst totally confident of the correctness of its position, considers that all sides must benefit, regardless of their political positions, from clarification of applicable international legal principles.

- (5) Therefore calls on Her Majesty's Government to refer the point to the International Court of Justice for an advisory opinion."

Mr Speaker, in moving the motion, in clause 4 I have taken the liberty of quoting some of the words used by the Chief Minister when he addressed the Fourth Committee in October this year. I hope the Chief Minister does not think that I am up to something fishy and quoting him out of context like he did the last time I did that in July.

The motion seeks to show the state of play as it is at present. Let me say that the position of the United Kingdom today is not the position that the United Kingdom has held previously whereas our position today is the position we had in 1964 and the Spanish position today is the position they had in 1964. The only party that seems to have experienced shift of position on the applicability of the Treaty of Utrecht in regard to self-determination is Her Majesty's Government and therefore we ought to press on Her Majesty's Government demonstrated willingness to review its position previously to get them to go back to where they were in 1964. If we cannot, then we should press them to have the courage of their convictions and test the validity of their arguments. When Joyce Quinn was in Gibraltar recently before she was moved elsewhere I raised the matter with her and she undertook when she got back to the United Kingdom to review the position and look at the possibility of taking such a step. Unfortunately she was not there long enough to be able to do it and I hope it was not her willingness to review it that accelerated her move elsewhere.

In the recent debate on television it was stated that the Government had taken a legal opinion on this question of the Treaty of Utrecht which had come out favourably. It is a matter for the Government to decide how much of that they want to put in the public domain. No doubt we will have an opportunity of getting more information when we meet on the 1st December. Let me say, Mr Speaker, that as I mentioned in that debate the Legislative Council and the Government of Gibraltar in 1966 obtained an

opinion from Sir Ivor Jennings, Professor on Constitutional Law from Cambridge University at the time, with the full knowledge and encouragement of the British Government who was arguing in the United Nations that the Treaty of Utrecht did not affect our right to self-determination. I think it is worth recalling that in September 1964 the Committee of 24 dealt with the case of the Falklands. The result was that they invited the United Kingdom to open negotiations with Argentina to find a solution bearing in mind the interests of the population of the Falklands. The United Kingdom replied that they could not contemplate any discussions with Argentina on the question of sovereignty over the Falkland Islands because the essential point was the right of the Falkland Islands people to self-determination and that this right was not negotiable. A month later the Committee of 24 virtually repeated its statement in respect of Gibraltar, inviting the United Kingdom and Spain to undertake conversations to find a negotiated solution bearing in mind the interests of the population of Gibraltar. The United Kingdom replied the same as they had done in the Falklands that they were not prepared to discuss sovereignty over Gibraltar with Spain because the United Kingdom did not accept that the Treaty of Utrecht conflicted with the principle of self-determination of the people of Gibraltar. Regrettably, they moved from that position to virtual identity with the Spaniards in 1985 when the publication of the implementation of the Brussels Agreement of 1984, Sir Geoffrey Howe came to Gibraltar, was interviewed by Clive Golt on GBC and in answer to a question about the right to self-determination of the people of Gibraltar he said on television here that the Treaty of Utrecht was the only legal basis of British sovereignty over the Rock and that consequently we could not have the things that we liked about British sovereignty and not the things that we did not like and that that meant that we did not have the right to self-determination and that Gibraltar could only be British or Spanish. Happily, that position has since been changed and the latest United Kingdom position as explained by Douglas Hurd when he spoke in the Dependent Territories Conference which was organised by Gibraltar and the Falkland Islands was to make a statement saying that in the case of Gibraltar the right of self-determination was constrained. Whilst we do not accept that it is constrained, it

is certainly better than the position adopted in 1985 by Sir Geoffrey Howe which continues to be and has been throughout the Spanish position on Utrecht. In the case of the Spanish argument, part of their argument has been throughout.... they have not highlighted that in recent years, but it was there at the beginning, it has been that if we were given the right to self-determination, at that very moment, there would be a theoretical transfer of sovereignty to us and that would breach Utrecht irrespective of what was the option that we picked in the exercise of the right. That particular point was looked at by the opinion of Sir Ivor Jennings and he rejected that that argument was sustainable and the advice that he gave in 1966, which I think holds true today, is that if the United Kingdom or the United Nations or anybody else cared to refer the question of the provisions of Article 10 of the Treaty of Utrecht in terms of denying the people of Gibraltar the right of self-determination no modern court, he said in 1966, could come to any other conclusion. I believe that that opinion, given in 1966, which was shared by the United Kingdom and the opinion that was given in 1987 by James Fawcett, a lawyer who had been the Foreign Office's adviser on constitutional law and who was contracted by the AACR subsequently after his retirement of course, his advice was very clear cut. It was looking primarily at the question of free association and he came to the conclusion that the Treaty of Utrecht did not and could not prevent the people of Gibraltar from exercising their right to self-determination and choosing a form of association with the United Kingdom. Indeed, in all the constitutional proposals that have been studied in Gibraltar since 1964 by the different committees of this House, that has been the underlying belief of the correct position throughout. Therefore, that is what I seek to reflect in the reference in my motion that the view of this House has always been that our right to self-determination is unquestionable.

I think that the Charter of the United Nations makes that equally clear. I believe it is Article 103 of the Charter that makes clear that if there is a conflict between a bilateral treaty and the Charter then the Charter prevails. It says "in the event of a conflict between the obligations of members of the United Nations under

the present Charter, and their obligations under any other international agreement, their obligations under the present Charter shall prevail". Since the Charter makes clear that there is an obligation under Article 73 in respect of a non self-governing territory and we are such a non self-governing territory and the administering power is described as having a sacred trust to promote to the utmost the well-being of the inhabitants and ensure that they develop self-government and that they exercise self-determination, it seems to me very clear that there is..... and if the odds that anything other than a favourable answer could materialise from such a reference seems to me to be miniscule, unless we actually think that they can be got at. I would have hoped and thought that in the case of the International Court of Justice we are on safer ground than we are in the European Commission and in the Fourth Committee. The provisions in the Charter for reference are contained in the statutes of the Court and in fact I think it shows that neither the United Kingdom nor the Kingdom of Spain is being honest in this question of their alleged dispute over Gibraltar, because if there is one thing that the International Court is eminently suited for it is at seeking to resolve amicably disputes between Member States that are signatories to the Charter of the United Nations. Either party has had it within its gift to refer the matter and has never chosen to do it. The only time the Labour Government ever talked about referring to the International Court anything to do with Gibraltar was the question of the isthmus. I believe that we need to continue to press the case at the United Nations because the Charter of the Court makes it clear that it is open both to Member States and to the General Assembly and the Security Council and institutions of the United Nations. The United Nations could, in theory, refer the matter. I think we are unlikely to persuade them to refer it if they know the United Kingdom to be against. The Kingdom of Spain has made, on a number of occasions, the case in the United Nations itself about the Treaty of Utrecht. I think the last time they made it was in the Antigua Seminar where Sr. Grifo actually raised this question of the Treaty of Utrecht in his contribution. Therefore, it also puts them in a spot if they are seen to be opposed or reluctant to see the legal issues clarified. Therefore, I believe it would certainly be in our interest and it is

something that we should lobby the British Government on and that we should do it on the basis that it is the unanimous view of this House. I know that we have passed motions in the past and that does not necessarily mean we are going to be able to shift the Government but nevertheless we have to give it a try. I commend the motion to the House.

Question proposed.

HON CHIEF MINISTER:

Mr Speaker, I believe that there is a very substantial measure of agreement on both sides of the House around the text of this motion. Nevertheless, I do want to propose some amendments for reasons which I will explain to the hon Members and which I believe will enable them to support the amended resolution given the nature of the amendments that I wish to propose. Ironically, the hon Member in his address refers to the fact that the United Kingdom's position in 1964 was different. They were then arguing that the Treaty of Utrecht was not an obstacle to self-determination. I think that is worth including in the motion. Mr Speaker, I have no difficulty in distributing the text of the amendments now so that hon Members can have it in front of them whilst they hear what I say. For the ease of the House I have underlined the amendments so that they can see on the piece of paper that they now have in front of them what was their original text and what is our amendment.

Mr Speaker, I believe it is worth adding, after the word "Utrecht" in that paragraph 2 the words "even though", where it said "notes that the United Kingdom holds the view that the right of the Gibraltarians to self-determination is constrained by the provisions of the Treaty of Utrecht...." I believe it is worth saying "Notes that the United Kingdom now holds the view that the right of the Gibraltarians to self-determination is constrained...." I would like to add there the words "or curtailed". I will tell the hon Members why. The hon Member has said that Douglas Hurd used the word "constrained". I am not sure that he used the word "constrained" as opposed to "curtailed" and certainly subsequent British

statements and answers in the House have used the word "curtailed" rather than check whether the word "constrained" and the word "curtailed" mean exactly the same thing, we could just use both. "Constrained" or "curtailed" by the provisions of the Treaty of Utrecht and then we might add "even though in 1964 the British representative at the United Nations told the United Nations that his Government do not accept that there is any commitment under the Treaty of Utrecht binding us to refrain from applying the principle of self-determination to the people of Gibraltar and completely rejects the attempts by the Government of Spain to establish that there is any conflict between the exercise of self-determination by the people of Gibraltar and the provisions of the Treaty of Utrecht". That is the position that the United Kingdom's Ambassador to the United Nations was articulating in 1964 and that is the position from which the hon Member rightly said before that the United Kingdom had resiled and I think it is worth spelling out so that this resolution should be free standing.

Mr Speaker, also there is the point that the Government have now obtained a further legal opinion and in a new paragraph (5) we would like to add "Notes and welcomes the fact that the Government of Gibraltar has sought a further legal opinion on these and related questions from an international law expert and that the final opinion is expected shortly." I think I said on television the other night that what we have had so far is a draft interim opinion which is still to be settled and that is why we have put the fact there that the final opinion is expected shortly.

Mr Speaker, we would like the Resolution also, only so that it is free standing on this issue, to refer to the fact that both this and previous Governments have requested the United Nations itself in the past to refer the question to the Court for an advisory opinion. I think it is also worth referring in case people who are not in the know of the legal detail here that people should not ask themselves "why does not the Gibraltar Government refer the point?". I would like to add a paragraph to the motion that simply makes it clear that the legal advice that both Governments have had is that we do not have the legal right to do it and then the only

sense in which we would like to change what the hon Members say is that whereas they call only on the United Kingdom to refer the point, we think that there is value in calling on all three parties. If there is any thrashing out to be done here, I think all parties should be made either to refer or to be seen not to be willing to refer and then people can draw their own conclusions from that. Therefore, the eighth paragraph simply says "calls on Her Majesty's Government, the Kingdom of Spain and the United Nations or any one of them to refer the matter to the Court". Therefore, Mr Speaker, the motion that we would like passed in this House would read, "This House, (1) Reaffirms the view it has always held that the people of Gibraltar have and are entitled to exercise the inalienable right to self-determination as provided for by the Charter and Resolutions of the United Nations..." I have also added, but not underlined, which is an oversight in the first paragraph I have added the words "and that this is not affected by the Treaty of Utrecht". The last words in paragraph (1) were not in their text, namely just to make it clear that what we have always said in this House is that we do not accept the Treaty of Utrecht argument. The Treaty of Utrecht is not incompatible with our right to self-determination.

(2) Notes that the United Kingdom..." I would add the word "now" "...holds the view that the right of the Gibraltarians to self-determination is constrained..." "...or curtailed" I would add "...by the provisions of the Treaty of Utrecht..." and then I would add "...even though in 1964 the British representative at the United Nations told the United Nations that his Government 'does not accept that there is any commitment under the Treaty of Utrecht binding us to refrain from applying the principle of self-determination to the people of Gibraltar.....' and completely rejects the attempts by the Government of Spain to establish that there is any conflict between the exercise of self-determination by the people of Gibraltar and the provisions of the Treaty of Utrecht".

“(3) Notes that the Kingdom of Spain holds the view that the provisions of the Treaty of Utrecht deprive Gibraltarians of the right to self-determination.”. That language is the one in the hon Member’s motion.

“(4) Whilst totally confident of the correctness....” that is the hon Member’s language and we would add “....of the position that it has always maintained.....” and there we would add “...and of the position articulated by the United Kingdom at the United Nations in 1964, considers that all sides must benefit, regardless of their political positions, from clarification of applicable international legal principles”.

Of course, Mr Speaker, I am not in a position now to improve on the words that are used in the United Nations and which the hon Member has borrowed but, of course, it may well not benefit one other member. If we are right it certainly would not benefit Spain to have this clarified and therefore perhaps at the United Nations I should have used the words to the effect that presumably no member would object to the international principles being exposed or settled or presumably none of the parties would wish to misrepresent the international legal position. But the statement that every party would benefit from the clarification is necessarily and axiomatically incorrect because necessarily if it helps us it does not benefit them.

“(5) This is a new paragraph “Notes and welcomes the fact that the Government of Gibraltar has sought a further legal opinion on these and related questions from an international law expert and that the final opinion is expected shortly”.

“(6) Also a new paragraph “Notes that this and the previous Government have requested the United Nations itself to refer these questions to the International Court of Justice for an advisory opinion”.

“(7) Again a new paragraph “Notes with regret that only the parties to an international treaty and the United Nations itself.....” this is the point that the hon Member has just read out from the

Charter “can seek an advisory opinion on the validity, meaning and effect of a treaty provision and it therefore appears that the Gibraltar Government itself lacks the legal right and standing to petition the court”.

“(8) Whereas the hon Members made the call only on Her Majesty’s Government we would like it to read, “Therefore calls on Her Majesty’s Government, the Kingdom of Spain and the United Nations or any one of them to refer to the International Court of Justice for an advisory opinion, the question whether the Treaty of Utrecht now restrains or curtails the rights to self-determination of the people of Gibraltar”.

Mr Speaker, I add the words there “now curtails” because one of the legal issues is that there may have been a time in which it did curtail but international legal principles have moved on. Even if it may at some time have curtailed we believe that the correct analysis in international law is that whatever may have been the position in accordance with international principles that applied in 1704 it could not now curtail under international law as it presently exists.

Mr Speaker, I would therefore seek to move those amendments. The hon Member recited the views put by Sir Geoffrey Howe in his interview on GBC in 1985 that because the Treaty of Utrecht is the only legal basis for British sovereignty of Gibraltar, therefore we could not pick and choose the bits that we want and if we wanted the basis for sovereignty we also had to accept the bit about the right of first refusal. Actually, we believe that that is an erroneous proposition of international law. In other words, we believe that it is not international law that one bit of the Treaty cannot stand without the other and that that itself is the subject of the legal opinion. That precise point is, amongst others, the subject of the legal opinion that the Government have sought. Therefore, if the United Kingdom Government are saying we are stuck with the first opinion, with the first refusal clause, because otherwise the bit in the Treaty that gives us the right to be in Gibraltar at all goes down the tube and that we cannot separate the two clauses and say one is valid now but the other is not, that

that is actually a misconceived position which is unsustainable by the application of current international legal principles.

Mr Speaker, simply for the accuracy of the record I think the hon Member said that the United Kingdom's position on Utrecht and its effect on self-determination is now the same as Spain's position. I do not think that that is true.

HON J J BOSSANO:

I did not say that. I said they had moved to the same position when Geoffrey Howe said what he said in 1985 but that now they had moved back slightly which was better than that position when they talked about it being constrained or curtailed.

HON CHIEF MINISTER:

Yes, because in other words we agree that whilst Spain would argue that we have no right to self-determination at all, Britain says we have it if we can squeeze between nothing and the Treaty of Utrecht. That is the difference in their position. Again, just on another point of detail for the record I think I heard the hon Member say that the only time that the Labour Party had contemplated the question of a reference to the Court it was only willing to do so in respect of the isthmus. The hon Member was around at that time and I was not, politically, so to speak, but was it not the case that it is the Spaniards who wanted to refer only to the isthmus and when Britain said "let us refer it all to the International Court of Justice" the Spaniards said "no, I am willing to refer the isthmus but not the rest of Gibraltar to the International Court of Justice". That has been my understanding but if that is not his understanding he may be correct.

Mr Speaker, I commend my amendments to the House which I would suggest to the hon Members does not alter the central spirit of their motion but simply pads it out with more information and adds the call on the other two parties as well or any one of them rather than only on the United Kingdom.

Question proposed.

HON J J BOSSANO:

Before I deal with the amendment, the last point that was made, I have a very clear recollection that the proposal of the Wilson administration was that since Spain did not dispute the sovereignty of the city under Utrecht, which they accepted had been ceded, that the dispute as to the legitimacy was over the isthmus and that consequently they should refer the isthmus and Spain was not prepared to refer anything, not even the isthmus. That offer has never been repeated and certainly I do not think it has necessarily the same benefits for us as what we are seeking. It is a completely different issue because the last thing we would want was to have somebody deciding that we are not entitled to the isthmus because after all it would be a terrible disaster. Of course, the Spanish argument throughout has been that they are two separate issues. We know that that was reflected in the Airport Agreement.

In the case of the amendments that have been moved I think that it is true to say that the bulk of the changes do no more than state explicitly things that we believe everybody knew and of course it is true that everybody knows it or may know it in Gibraltar or find out by looking back. Certainly the things that are spelt out would not necessarily be self-evident to somebody outside if they were not spelt out. We have no difficulty in accepting the amendments of that nature. We are certainly not sure whether the legal opinion that has been obtained is something that should be welcomed but we are prepared to go along with it at this stage. I have to put a caveat that once we see what the opinion is we will see how much it should be welcomed. I accept what the Chief Minister said in moving the amendment that the relevance of it now is not the relevance it had in 1704 but, of course, in 1704 there could be no conflict between the Treaty and the principle of self-determination because the principle did not even exist in 1704. The conflict could only come once the principle was enunciated in the universal declaration of Human Rights and in the Charter of the United Nations. I would have thought that the conflict between

the Treaty and the Charter has existed since the Charter has existed. In our view the moment the Charter comes in and says in Article 103 everybody that signs up to the Charter of the United Nations is accepting that their obligations under the Charter prevail over any obligations that they have in any international treaty then from that moment on the Charter overrides the Treaty. If by now we mean now since 1945 then fine. I want to make that clear that as far as we are concerned there is nothing today more recent except of course that the principles of the Charter of the United Nations in 1945 have been given effect to and have been reflected in reality in the 54 years that the United Nations has been in operation and it is still happening.

HON CHIEF MINISTER:

Mr Speaker, I accept all that the hon Member is saying but that is not what I had in mind. Other techniques of international jurisprudence move on just as they do in national law and that approaches and attitudes towards the interpretation of treaties change as well just as by the equivalent of common law. Every time an International Court of Justice sits on any case it moves a little bit applicable principles of international law even on the question of interpretation of treaties. The point I had in mind that had changed is not just the fact that the Charter makes it a primary over bilateral treaties and is not the fact that in 1704 the principle of self-determination did not exist. I am talking about other general principles of international law.

HON J J BOSSANO:

I think we have no problem also with the fact that it is a matter for regret that colonial territories are put in a position of inferiority in the United Nations notwithstanding the fact that the Charter is so important for looking after our welfare. Nevertheless we are not able, nor is any other colony, able to initiate this action but I think there is a new element introduced in the last amendment in the Kingdom of Spain and we would prefer that it should not be there. The Kingdom of Spain cannot prevent the United Kingdom. Even if we persuade the United Kingdom to initiate the action, where

there is a treaty between two parties, both parties need to agree. One may ask the Court to make a ruling but the party that is signatory to the Treaty has to be in agreement and therefore we have no objection with the motion calling on the United Nations as well as the United Kingdom although the purpose of bringing the motion to the House was specifically so that it would go as a formal request from this House to the British Government. Frankly, we do not mind that the United Nations should be included if the Government want to include the United Nations, although we feel that the fact that we are noting that this Government and the previous one has requested the United Nations to look at this matter and the fact that in moving the motion I said I felt that that needed to carry on although in practice we feel it is most unlikely that the General Assembly or the Committee of 24 or the Fourth Committee would move in this direction without first sounding out the UK as the administering power. If the UK says "no" to the UN the UN will not do it. Therefore, it is really the United Kingdom that I think we have got to press and I believe that it is not a good idea for this House of Assembly to be addressing requests to the Kingdom of Spain. I think we have to call on our colonial power to do something about it because it is their responsibility. They are the ones who are denying us self-determination. If we are going to sit down to decolonise Gibraltar we are going to sit down with the United Kingdom. If we are going to be sitting down on the 1st October to look at the possibility of coming up with proposals it is proposals that are going to the United Kingdom and it is the United Kingdom that will be saying to us when they look at those proposals "well, we have got a problem with the Treaty of Utrecht" and then we should say to them "well, if you have got a problem with the Treaty of Utrecht here is a motion of the House of Assembly, which calls on you and nobody else, to do something about it. You convince us that you have got a problem with the Treaty of Utrecht and take it to the International Court". That is really where we feel the motion ties in with the other things that we are doing and therefore we would prefer not to have that included there and we would ask the Government not to include it rather than have the position where we have to abstain on the whole motion because we are going to be voting against that particular clause.

It is preferable that we carry the motion but we really cannot go along because we do not really think it is a good idea to have it there and we think, in the explanation that I have given this should be used to reinforce the position we are going to be taking in the Constitutional Committee and the question of the Kingdom of Spain should not enter into it.

HON CHIEF MINISTER:

The Government do not need to stand on the point. I think that whilst the hon Member is seeing this narrowly in terms of bilateral constitutional debate with the United Kingdom the Government were seeing it more in internationalist terms. Those that argue that the Treaty of Utrecht is a relevant factor here are, in a sense, being challenged to put it to the test and that the United Kingdom should not hide behind the Treaty of Utrecht. The United Nations, in ignoring his appeals and mine, should not hide behind the Treaty of Utrecht and that Spain should not hide behind the Treaty of Utrecht. If Spain wants to go around the world saying "the Treaty of Utrecht this, the Treaty of Utrecht that" we are collectively now saying "fine, put up or shut up. If you are not willing to test your thesis about the effect of the Treaty of Utrecht, stop going around the world pumping it around as the bedrock of your arguments over Gibraltar". That was the wider context in which we were seeing this, not just the United Kingdom, not just the..... all three of them because in a sense all three, when the United Nations used to hear the hon Gentleman between 1992 and 1995 and has not been heard since, both of us have raised the Utrecht argument and it does not stir the Committee to say "these guys are right we are going to recognise it". Therefore, the United Nations also is giving the Treaty of Utrecht more effect, more meaning, than we are and the United Kingdom I agree with him is doing it but Spain is also doing it and we would like to remove the shield from all three of them so that there are no bushes behind which any of the three parties can hide. This is therefore not calling to Madrid for support. This is rather a case of a challenge to Spain saying "if you believe that the Treaty of Utrecht curtailed the right to self-determination, no no, in your case if you think that the Treaty of Utrecht denies the right to self-

determination to the people of Gibraltar you will have no difficulty in consulting 15 international judges on the point". That is the only reason why we have included it, because we were seeing this as a wider anti-relevance of Utrecht instrument rather than in any exclusion bilateral situation between the United Kingdom and Gibraltar. I would have hoped that the hon Members could see the value of doing that on the "put up or shut up" basis but if they do not see the value of it which I think would be an error on their part, we are certainly not going to jeopardise the unanimity of this House by insisting on the inclusion of this challenge to Madrid. We can make the challenge to Madrid on another occasion or separately but that is the reason why it is there.

The amendment would have to be "therefore calls on Her Majesty's Government and the United Nations or either of them". So it would read "Therefore calls on Her Majesty's Government and the United Nations or either of them.....".

Question put on the amendment. Carried unanimously.

Question put on the motion, as amended.

The motion, as amended, was accordingly carried.

The House recessed at 4.50 pm.

The House resumed at 5.10 pm.

HON J J BOSSANO:

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

"This House –

- (1) Notes that the United Nations welcomed in 1985 the commencement of the negotiating process between the United Kingdom and the Kingdom of Spain with the following words: "...welcomes the fact that the two governments initiated, in Geneva on 5th February 1985 the negotiating

process provided for in the Brussels Statement and foreseen in the consensus approved by the assembly on 14th December 1973; and urges both governments to continue the abovementioned negotiations with the object of reaching a lasting solution to the problem of Gibraltar in the light of the relevant resolutions of the assembly and in the spirit of the Charter of the United Nations.

- (2) Notes that the consensus approved on the 14th December 1973 called for negotiations between the two governments taking into account Resolution 2429(xxiii).
- (3) Notes that Resolution 2429 (xxiii) requested the administering power to end the colonial situation in Gibraltar no later than 1st October 1969 and made reference in its preambular paragraphs to the principle of territorial integrity.
- (4) Notes that since 1985 the United Nations has on an annual basis called on UK and Spain to "continue their negotiations with the object of reaching a definitive solution to the problem of Gibraltar in the light of the relevant Resolutions of the General Assembly and in the spirit of the Charter of the United Nations",
- (5) Notes that these consensus statements have been co-drafted by the representatives of the United Kingdom and Spain and supported every year by both governments.
- (6) Notes that the representative of the Kingdom of Spain has regularly since 1985 stated at the UN that the annual consensus statement and relevant resolutions establish a so called "doctrine" which denies the people of Gibraltar the right to self determination.
- (7) Calls on Her Majesty's Government as co-drafter of the said consensus statement to publicly confirm the British interpretation of the following:

- a) what is the "light" to which the consensus statement refers?
- b) what are the relevant resolutions of the General Assembly?
- c) what is the "spirit" of the UN to which reference is made?
- d) does it mean the recognition or the denial of the right to self-determination of the people of Gibraltar?".

Mr Speaker, I know that at least there is not going to be an amendment calling on the Kingdom of Spain to explain what these things mean because without being asked by us to explain what these things mean they have gone to great lengths to explain them in the United Nations. We know what the Spanish interpretation of the UN Consensus Statement is. We do not know what the British interpretation is because the British have never chosen to dispute the only interpretation there is on the record which is the Spanish one, that is, the Spaniards have, not just in the United Nations, in the statements issued by the Ministry of Foreign Affairs which is made available to all interested parties, in their website on the internet, in press statements and on every conceivable opportunity, explained that as far as they are concerned the doctrine of the United Nations is that the question of Gibraltar has to be resolved and Gibraltar has to be decolonised by making the applicable principle the restoration of the territorial integrity of the Kingdom of Spain. The United Kingdom has not, in exercising the right of reply in the United Nations, ever said "when we support this Consensus we do not support it on the premise that the meaning of these things are as Spain intends them to be interpreted". We in Gibraltar have argued in the United Nations that it is not the doctrine of the UN but the doctrine of the Kingdom of Spain. Indeed, Mr Speaker, I think that in recent years, as opposed to the 1960s, Spain has made far less use of the argument of Utrecht and far more use of the supposed doctrine. The questions that my motion seeks a reply to from the British Government are the questions that were put to the Fourth Committee this year by the Gibraltar

Government. They are not questions that we had put ever before to the United Nations although we had raised with the United Kingdom and never got a straight answer how it was that they could support the consensus which talks about the resolutions of the United Nations when it seemed quite obvious that the link between the resolution since 1985 and the resolutions pre-1985 inevitably put us back to the ones that had been opposed by the UK and condemned by the UK. This is why we see as so serious and so dangerous that the annual consensus since 1985 and indeed before 1985 when the UN in 1985 welcomed the fact that the negotiations were going to start and pre-1985 they had annual consensus hoping they would. The hope that the negotiations with Spain would start was something that was initiated in December 1973 with a resolution in the Fourth Committee which was at the time as far as the UK claimed here in Gibraltar something that was brought by the Chairman of the Committee who was Venezuelan and the United Kingdom would have had us believe then in 1973 here in Gibraltar that this was something that the Venezuelan had done out of the blue and that even the Spaniards had no knowledge that it was on the way. The view the United Kingdom took in 1973 was that because they persuaded the Venezuelan proposer that the wording should be changed from "in accordance with" to "bearing in mind", the resolutions of the 1960s that that was a sufficient weakening of that statement to get the United Kingdom to support it and the United Kingdom supported it in 1973 because they had been able to get the thing watered down according to them. If they were able to get it watered down in 1973 it is quite obvious that Spain in subsequent years has managed to make everybody forget that any watering down took place and has gone on the record, year in year out, arguing that in fact the resolutions which have to be taken into account in the negotiating process are the resolutions which were passed in 1967 and in 1968. Indeed, in the June 1999 statement on behalf of the Spanish Government before the Committee of 24, the Spanish representative made absolutely clear that the applicable principle for the decolonisation of Gibraltar as far as Spain is concerned were Resolution 2353(XXII) of December 1967 and Resolution 2429(XXIII) of December 1968. The 1967 Resolution, 2231, was the one that stated, amongst other things,

".....the Special Committee declares that the holding by the administering power of the envisaged Referendum would contradict Resolution 2231(XXI)....". So in fact the Special Committee warned the United Kingdom before the Referendum that the Referendum was in conflict with the Resolution that had been passed in 1966. That Resolution had said that the General Assembly called on the two parties to continue their negotiations and called on the United Kingdom, the administering power, to expedite in consultation with the Government of Spain the decolonisation of Gibraltar. The Spanish argument is based on that because in 1966 that was one of the clearest expositions. The decolonisation of Gibraltar had to be expedited in consultation with Spain. In the subsequent year, in 1967, the UK was told not to hold the Referendum. When they held the Referendum, the United Nations condemned the Referendum as being contrary to the prior Resolutions of the United Nations. Then, from that year on, they kept on calling on the United Kingdom, post 1973, to commence the negotiating process envisaged by the Resolutions of 1973 and in 1985 they welcomed it. In all this period the United Kingdom, used the strongest possible language in condemning the initial resolutions, then subsequently, has never once said on the record publicly in the United Nations that the claim by Spain that the bilateral negotiating process is a process which requires them to do it in the light of the relevant resolutions of the General Assembly that the relevant resolutions, as far as the UK are concerned, are not the resolutions they have opposed. I think we need to demand of the United Kingdom that they tell us what is their interpretation of the text which they and Spain put together in 1985 and have put together in every subsequent year.

In our judgement, Mr Speaker, this reflects certainly views which we have held for some time and views that have been developed in the years that the GSLP was in Government as a result of discovering links only through having gone through the United Nations. Much of this information, I regret to say, was never volunteered by the United Kingdom to Gibraltar. Even in previous years, in the years that I have been in this House some of the things were based simply on us picking up things in the news but

never on getting clear statements of what was going on from the United Kingdom, just like we were never told in Gibraltar in 1970 that the UN had moved from the three options to a fourth possible option and in 1976 the Select Committee of the House on the Constitution was still talking about only three options because the administering power had never told them that the United Nations had moved from three to four. It is information that is in the public domain but in fact had not been in the public domain in Gibraltar. Certainly in the public domain in the UN, all this stuff has been said in public in the United Nations over the years and we have not appreciated until very recently how there is a sequence that ties them all up and how it is that the nature of the Spanish argument makes full use of this sequence. I think the latest position that Spain is adopting predictably is to try and portray themselves as the injured party by saying, "here we are, in 1985 we welcomed the negotiating process on the basis of acting in accordance with the resolutions of the United Nations. The Resolutions of the United Nations are very clear. We have said every year what those resolutions require us to do. The British Government have never once denied that, their silence has been there year after year. They have never disputed our interpretation. We have been trying as a reasonable well behaved member of the United Nations to get on with the business that we set out to do in 1984 and here we are, 15 years later, and we have got nowhere." Spain, in its latest position in the United Nations when Sr. Matutes spoke to the General Assembly this year, he was taking the line of portraying himself as the reasonable side of the equation and the British Government as the unreasonable and us really, we do not count. The British Government as the unreasonable one that is not honouring what has been agreed. I believe we need to get the United Kingdom, the right, to demand of them that they tell us what they mean when they support this. The Chief Minister has asked the United Nations and has asked them both in the Fourth Committee and in the Committee of 24 to explain what these references in the annual consensus are intended to convey. What are they supposed to convey to the colonial people? What is the light in the consensus? What is the relevant resolutions of the Assembly? What is the spirit of the UN to which reference is made? Does it mean the recognition or the

denial of our right? I believe that the people who put those words there, who were the British representatives at the UN and the Spanish representatives at the UN, this is a consensus that was co-produced between the two of them way back in 1985 when the negotiating process was welcomed. Spain has said every year, since 1985, what they understand it means. The United Kingdom should, in our judgement, have said that it did not mean that to them, if it does not and we hope that it does not. But they certainly have an obligation to say to us and indeed they have the obligation to say to us if they agree with any of the things that Spain has said. The closest that they have come to the Spanish position as I mentioned earlier was that interview in 1985 on the Treaty of Utrecht. I think we have got to flush them out on the meaning of the consensus. In the past, when we have tried to get them not in the same terms as the motion because we never asked for specifically what does this mean we said to them "how can it be that you support the consensus when you voted against the original resolutions?". Frankly, we never got a straight answer which to us was quite worrying because if the position of the British Government was quite clearly that they rejected entirely the Spanish position then that would have been a simple thing to say to give a straight answer to. But they never did, they hedged it and qualified it in so many words that we were not sure whether the answer was that they did agree or that they did not agree.

I commend the motion to the House and I hope that if we press the United Kingdom on this we will be able to get them to come clean.

Question proposed.

HON CHIEF MINISTER:

As the hon Member has himself explained, the questions that he asks in his motion are the same questions that I put to the UN in both my speeches this year. But with respect I think the hon Member misinterprets what was being done on the questions that were being put. These were not questions which I was putting to the United Nations not knowing the answer or suggesting to them

that they had more than one choice as to what the answer should be which is what he is inviting us now to put to the British Government. I was putting rhetorical questions to the United Nations. I spent 25 minutes explaining to them why we were right and the Spaniards were wrong and then I rounded off by saying "...and what is the spirit?" meaning "is anybody that is sitting up there seriously pretend that the spirit of the Charter of the United Nations is that the United Kingdom should do what Spain wants, namely hand over the territory of Gibraltar to Spain regardless of the wishes of the people of Gibraltar. Is anybody there suggesting or is anybody there willing to subscribe to the theory that that is what the spirit of the Charter of the United Nations calls?". Certainly, no one is suggesting that that would be light, that would be darkness. When I asked for "what is the light?" these were rhetorical questions to emphasise the absolute anachronistic nature of the Spanish pretensions in the case of Gibraltar. They were not questions which I was putting in the hope that somebody would communicate to me information by way of answer. When I asked the General Assembly what are the relevant resolutions, I was not inviting them to say "the one that says that it is territorial integrity and why the hell haven't the Brits handed you over yet?". What I was trying to say is, having spent 15 minutes making the case that there was not a doctrine of the United Nations as alleged by Spain, and having explained what the relevant resolutions were, as I hope to do this evening again, these were rhetorical questions and I fear that the hon Member may not have given sufficient consideration to the fact that if I ask the hon Member the time of day I am asking him to tell me what the time of day is and if I ask the hon Member "what do you think about Manchester United? Do you think they are a good team?" I am asking him to say whether they are good or not good but if I spend 25 minutes eulogising the virtue of Manchester United who have just done the triple and won the European Cup, the FA Cup and the Premiership and then I say "well, can you think of a better team in England?" I am not asking them, I am making a point am I not? That distinction is very important in the context of this motion before the House.

Mr Speaker, I believe that this motion as presently drafted suffers from two fundamental defects which prevent the Government from being able to support it in this form. One is that in our view the overall effect of the motion is simply too negative and suggests too much that the Spanish thesis at the United Nations may be right and will be right unless the British stand up and exercise their vocal cords in contradicting it. I am not willing to do that. I am not willing to concede the argument to Spain simply because the United Kingdom Government are inert and does not want to speak at all. In other words, I do not want silence to mean confirmation of the Spanish case. I would rather silence meant confirmation of our case. Therefore, I would want to make this motion read so that if the British Government do not say certain things in public they are agreeing with him and me. Not that if they do not say certain things in public they are agreeing with Spain, which is the essence of the motion as presently drafted. I believe that we should hold the United Kingdom to its public statement and not ask them questions which give them the opportunity to take the view that we think it is open to them to redraw the lines again of their position. Therefore, Mr Speaker, in our view this motion needs recasting in a way which we hope the hon Members will be able to pass with us. It needs slightly greater expansion on the references to UN Resolutions because, for example, the 1973 Consensus Resolution to which the hon Member refers in his text and says "notes that the Consensus of the 14th December 1973 calls for negotiations between the two Governments taking into account Resolution 2429(XXIII)...". What the hon Member does not say is that it also referred to and asked the parties to take into account Resolution 1514(XV) which is the Declaration of the rights of colonial people to decolonisation, which Resolution says that all peoples have the right to self-determination. Therefore, when he brings to this House a sequential argument in order to build a case, he has got to bring to this House all the information. I am not saying that when the United Nations inserted there the reference to 1514, they were advocating unambiguously our right to self-determination, but it was there as a balancing feature, I believe. I think the fact that the United Nations, even in 1973, were saying to the Spaniards and to everybody, it is not just 2429, but also

1514 which contains things which are helpful to us. I think that that needs to be reflected in this resolution as well.

Mr Speaker, I think the resolution should reflect the fact again, I hope the hon Members do not put words into my mouth, I am not overstating this point, but I believe that the difference in language between the 1973 Consensus and the 1975 Consensus is actually favourable to us to the extent that for the first time it introduced ambiguity because the hon Member says when the 1973 Resolution was passed there was a reference, "...notes that Resolution 2429 requesting the administering power to end the colonial situation in Gibraltar by no later than the 1st October 1969 made reference in its preambular paragraph to the principle of territorial integrity". In fact, it did not. It only did so indirectly by referring to Resolution 2353(XXII) of December 1967 which certainly mentioned territorial integrity. I think the hon Member will find that 2429 itself does not make any reference to territorial integrity in its preambular paragraph. After 1975, Mr Speaker, the annual consensus resolutions no longer made reference either to territorial integrity or to any resolution that made reference to territorial integrity. Suddenly, in 1975 there was the introduction of this raised bearing in mind the relevant resolutions of the General Assembly and in the spirit of the Charter, leaving it, I believe, open to argument for the first time of what were the relevant resolutions and what is the relevant spirit. I believe, therefore, that again, do not misunderstand me, I am not saying that the United Nations had resolved the issue in our favour, but for the first time in those consensus resolutions there was language which did not point, did not specifically refer to any resolution that mentioned the principle of territorial integrity or any part of the Spanish theory. Therefore, the hon Member and I as a result of the dropping of that language in the annual resolutions have been able to go to the United Nations to argue the contrary because obviously if the United Nations was passing every year a resolution that said the relevant resolution of this in relation to the decolonisation of Gibraltar is 3753 of 1967 in which we said that the decolonisation of Gibraltar was a question of territorial integrity and not a question of self-determination, the hon Member and I would both have looked very foolish going to the United

Nations and saying "the relevant doctrine is self-determination". There is no doctrine of the United Nations on territorial integrity. We have only been free to do that precisely because the consensus resolution changed in 1975 to make references to relevant resolutions without specifying what they were, leaving us open to argue that it is 1514(XV), namely the declaration on self-determination that is the relevant resolution and to make impassioned speeches about what is the spirit of the Charter and what is not the spirit of the Charter.

Mr Speaker, I am not sure that Spain has ever asserted that the authority for her contention that there is a doctrine to that effect in the United Nations is derived from the consensus resolutions. Certainly I agree that she argues that she believes that the relevant resolutions of the 1960s have that effect, which the hon Member and I would dispute but the hon Member will correct me, if he can, I have not researched every speech that the Spaniards have made in the last 20 years, but I cannot recollect without such research, that the suggestion that Spain said "ah, the consensus resolution supports my theory that UN doctrine is that the decolonisation of Gibraltar is by reference to territorial integrity and not by reference to the principle of self-determination".

Mr Speaker, I believe that what we should do in this House is to insert in this resolution a positive statement of what we believe is UN doctrine, what we believe are the applicable resolutions and what we believe is the spirit of the Charter. The hon Member said in his presentation of this motion that the United Kingdom in not challenging the Spanish interpretation of the doctrine is through silence implicitly accepting the application of the Spanish theory of territorial integrity. Mr Speaker, I obviously hold no brief for the British Government but I do not think one can say that of the British Government. The fact of the matter is that the United Kingdom rejected the resolutions of the 1960s, have always rejected the application of the principle of territorial integrity to the case of the decolonisation of Gibraltar and indeed I do not know if the hon Member knows that the reason why, since 1994 the European Union presidency has been unable to make on behalf of the European Union a statement to the Decolonisation

Committee on this matter is precisely because Spain has wanted to include in the European Presidency statement a reference to the principle of territorial integrity and the British Government has vetoed it and refused to allow it to be so pursuant to its rejection of the principle of territorial integrity in the decolonisation of Gibraltar. I have no doubt that the British Government rejects and acts in accordance with the rejection of the principle of territorial integrity in the matter of decolonisation of Gibraltar. I do not think we are free to argue in this House that the effect of the United Kingdom's co-drafting of the annual consensus resolution or of her failure, as obviously we would like her to do, to rebut the Spanish interpretation or the Spanish argument whenever she should that that puts into question the United Kingdom's rejection of the principle of territorial integrity I do not believe that that follows and that indeed the United Kingdom's actions in other respects, in respect of the principle of territorial integrity, demonstrates that it does not follow.

Mr Speaker, as I said before I believe that we should say these things in a resolution and that we should put the onus on the United Kingdom to explain publicly if they are different so that let us say what we believe is the United Kingdom's position and say that it is incumbent on her to explain, not just to Gibraltar, but indeed to Spain publicly, if her position is not as we believe we are entitled to recite in this House in this motion so that silence on the part of the United Kingdom which is what she is most prone to, which is where her desire not to engage in megaphone diplomacy recommends almost always, so that that silence means that she is agreeing with us not that she is agreeing with Spain. I assume that the hon Members will be interested in that. Accordingly, Mr Speaker, I would like to propose amendments to this motion.

Mr Speaker, the first paragraph of the hon Member's motion is perfectly fine as far as we are concerned. I would like to introduce given the hon Member's reference to the Brussels Statement and I do not wish to convert this motion into a motion on the Brussels Agreement, but we would like to introduce a paragraph that reads: "Notes that the Brussels statement and the negotiating process

established by it which were welcomed by the United Nations in 1985 includes the statement that "the British Government will fully maintain its commitment to honour the wishes of the people of Gibraltar as set out in the preamble to the 1969 Constitution".

We want to put that in for the following reason. We know that the preamble to the Constitution is less than what we want as a recognition of our right to self-determination and that simply agreeing not to hand us over to Spain against our wishes is not the right to self-determination. On the other hand, we believe that it is not intellectually open to anybody to try and make the link through the Brussels Agreement with the 1960s Resolutions of the United Nations to mean that through the Consensus Resolutions, through the Brussels Agreement, linking to the 1960s resolutions that what the United Kingdom is surreptitiously doing and without telling us is agreeing to negotiate the hand over of Gibraltar to Spain contrary to the wishes of the people of Gibraltar because that would not be compatible with the fact that the very same agreement, the very same Declaration, which is welcomed by the United Nations, contains the solemn commitment on the part of the British Government precisely not to do that. Precisely not to transfer the sovereignty of Gibraltar contrary to the wishes of the people of Gibraltar. Therefore, unless one interprets the preamble in a way which some politicians in Gibraltar have recently sought to do in my opinion incorrectly, try to interpret the preamble to mean that they can hand over the territory so long as they do not hand over the people, then necessarily the British commitment in the Brussels Declaration not to transfer the territory of Gibraltar to Spain contrary to our wishes is completely incompatible with any suggestion that Britain has agreed to decolonise Gibraltar by the application of the principle of territorial integrity because she could not do that, she could not deliver on that unless of course she could persuade us to vote for it which is, at the very least, improbable.

Mr Speaker, the third paragraph would be the equivalent of their second paragraph and which presently reads: "Notes that the consensus Resolution approved on the 14th December 1973

called for negotiations between the two governments taking into account Resolution 2429(XXIII)". We would like that to read "Notes that the consensus Resolution approved on the 14th December 1973 called for negotiations between the two governments taking into account resolution 1514(XV) of 1960 and Resolution 2429(XXIII) of 1968" and also adding "and that the former constitutes the UN's Declaration on decolonisation including the declaration that all peoples have the right to self-determination".

Mr Speaker, we are content with their paragraph 3 except that we would like to just correct what may have been an oversight on the hon Member's part when he says that Resolution 2429(XXIII) made reference in its preambular paragraph to the principle of territorial integrity, just for the sake of correctness we would like to say "and made indirect reference to its preambular paragraphs to the principle of territorial integrity by its reference to General Assembly Resolution 2353(xxii) of 19th December 1967".

Mr Speaker, we would like to add an additional limb to their paragraph 4, whilst I believe in leaving most of it intact. Whereas they say "notes that since 1975 the United Nations has on an annual basis called on the UK and Spain to continue their negotiations with the object of reaching a definitive solution to the problem of Gibraltar in the light of the relevant Resolutions of the General Assembly and in the spirit of the Charter of the United Nations". We would like to expand that to read: "Notes that since 1975 the United Nations annual consensus resolution has not made such reference..." such reference meaning reference to territorial integrity "but have referred instead to the relevant resolutions of the General Assembly and to the spirit of the Charter and have therefore..." and then it carries on as the hon Member had "called on the UK and Spain to continue their negotiations with the object of reaching a definite solution to the problem of Gibraltar in the light of the relevant resolutions of the General Assembly and in the spirit of the Charter of the United Nations".

Mr Speaker, their paragraph 5 which would become in our amended resolution paragraph 6 is perfectly acceptable to us. Their paragraph 6 which is now our paragraph 7 is also perfectly acceptable to us except that we would extract from it pursuant to what I said ten minutes ago, the references to the consensus statement because we do not believe that Spain has sought to draw on the consensus statements. We would like that to read "Notes that the representative of the Kingdom of Spain has regularly since 1985 stated at the United Nations that the relevant resolutions establish a so called 'doctrine'.....".

Mr Speaker, there was a time that the hon Member would readily have agreed with this because he will recall making a speech at the United Nations, it might have been in 1992 or 1993, one of his first speeches, the one that he adlibbed in which he said "I am not asking you to change the resolution". He would not have said to the United Nations "I am not asking you to change the resolution" if he had thought at the time that the effect of the consensus resolution was to support the principle the Spanish version of the UN doctrine. He would then have said "I am asking you to change the resolution because I must because it means that the Spanish are right in the doctrine and I say that they are wrong", so the fact that he has never thought it necessary to ask for the resolution to be changed I think supports the contention that he has never seen in the consensus resolutions support for the Spanish doctrine or even on the basis of what the Spaniards claim.

Mr Speaker, their final paragraph then calls on Her Majesty's Government as co-drafter to publicly state what their interpretation is of light, relevant resolution and spirit. We believe that we should make here a positive statement of what we believe the position is and if necessary call on the United Kingdom to say "look, if this is not the case, which is entirely consistent with your public statements, but if it is not the case, it is incumbent upon you to say so and if you do not say so then it is because you are agreeing with what we are saying in this motion". Therefore, I would suggest the following text by way of amendment to that paragraph: "asserts that the relevant resolutions" the applicable

spirit of the charter, the applicable doctrine of the United Nations and the applicable principles of international law are those which:

- a. declare the existence of the right to self-determination as the inalienable right of all colonial peoples and non-self governing territories listed as such by the United Nations which includes Gibraltar;
 - b. have recently declared that in the process of decolonisation there is no alternative to the principle of self determination thereby implicitly asserting that in the process of decolonisation there is no principle of so called territorial integrity which is applicable; and
 - c. calls on the administering powers and all other members of the United Nations even if they are not administering powers to respect these principles.
- (9) Notes that Her Majesty's Government has always rejected and continues to reject resolution 2353(xxiii) of 19th December 1967 and General Assembly Resolution 2429(xxiii) of 18th December 1968 as well as the application of the principle of territorial integrity to the case of the decolonisation of Gibraltar.
- (10) Accordingly assumes that the 'light', the 'relevant resolutions of the General Assembly' and the 'spirit of the United Nations Charter' to which reference is made in the annual consensus resolutions, co-drafted by Her Majesty's Government must be the ones referred to in paragraph (8) of this motion and that these amount to a recognition of the right to self-determination of the people of Gibraltar (albeit now apparently in HMG's view, and contrary to her position in 1964, curtailed by the provisions of the Treaty of Utrecht).
- (11) Declares that if the position of Her Majesty's Government generally and in particular reflected in its co-draftsmanship of the annual consensus resolutions, is not as stated in paragraphs (8), (9) and (10) of this motion it would be

incumbent on HMG to publicly explain her position and that in the absence of such public explanation to the contrary all parties are entitled to assume that Her Majesty's Government position is correctly stated in this motion".

Mr Speaker, we believe that the effect of the amended motion is to place the onus on the British Government to challenge these public statements of what must be her position by virtue of what she has said and by virtue of the positions that she claims to defend so that if the British Government chooses to remain silent on the basis that she does not whistle when she is asked to whistle, that that will mean that she is agreeing with us, rather than..... *[Interruption]* If the hon Members believe that the British Government will not answer then they will not answer either when he puts his questions in his motion. If the hon Member believes that he must agree with me that it is preferable to have on the record British agreement with us, implied from their silence, than Britain's agreement with Spain implied from their silence. These statements are perfectly clear and certainly we believe that they are the deducible position of the British Government from her public statements and her public conduct. If they are wrong let them say so and if they do not say so, all parties, including the other co-draftsmen of the resolution and the people of Gibraltar are entitled to be told that this is not the United Kingdom's position. If she does not, we are all entitled to assume that it is the United Kingdom's position.

Mr Speaker, on the basis of all that I have said I commend my amended motion to the House.

Question proposed.

HON J J BOSSANO:

Mr Speaker, it is quite obvious that given the reaction of the Government Members to the statement that their view of the Foreign Office and our view of the Foreign Office is..... we are not talking about the same animal here. If the Chief Minister really thinks that we are in a situation where it is incumbent it

would be incumbent if there was the slightest degree of integrity in the things that they do and there is mountains of evidence that there is not. They are quite happy to tell us we are entirely right and then tomorrow go to Spain and tell the Spaniards that they are right, as long as they do not have to say at the same time to both of us in the same room. He knows that, I know that, everybody else in Gibraltar knows that so why should we say what a major victory we have now pinned them down and because they are not going to say anything that means that they have agreed with us and Spain now has to accept that they have agreed with us. I think that their silence in the United Nations, their failure to refute the Spanish allegations in the United Nations means that they have permitted Spain to get away with building up a case in the UN in that the resolutions which they support, the consensus motion that they support every year refers to resolutions which they voted against. The Chief Minister says they voted against this resolution in the 1960s, which they did, they did not just vote against them. Lord Caradon said they were a disgrace. They were against everything the United Nations stood for. That is what they said, but Mr Cook last year came out of a meeting with Sr. Matutes and said to the press "we have just had discussions in the Brussels Process which arises from an agreement made by the Tory Government, not by us...." As if they would not have done it ".....and it relates to the political and constitutional status of Gibraltar". He had just come out of discussing our political and constitutional status which is what he was being asked to do in the 1960s and which is what they condemned in the 1960s as being contrary to the principles and the Charter of the United Nations. So they are acting in a way which is consistent with bearing in mind, which is what they said they would do, bearing in mind those resolutions. They have accepted a consensus which welcomed the start of the negotiating process which we are dead against and which as far as we are concerned the Brussels statements says the British Government will stand by the Preamble to the Constitution. It is quite obvious that what the Brussels Statement says is that both sides agree to negotiate in the light of the resolutions of the United Nations and one of the two sides states that he will do so while fully maintaining the commitment to honour the wishes of

the people of Gibraltar. I do not know whether he has ever been told privately what I have been told privately, that the difference between the British Government and the Spanish Government is that the British Government has accepted that we can only be a British colony or become a part of Spain but does not accept that that situation can change unless and until we are persuaded to approve it. That is the difference between the two sides. We would like them to say that publicly if that is their position, not to say it to him or to me and expect us to do the dirty work for them. Let them come out and say so publicly. If we say that is not their position, let us send a message of comfort to the people of Gibraltar that we have nothing to worry about because the British are rock solid in defending our rights and if we declare here they will shed the last drop of Anglo-Saxon blood to defend us, unless they deny it, then we can go to sleep tonight happy that now that we have said it and they have not denied it that means we have got nothing to worry about. I do not think that is true and as far as I am concerned we will not support the amendments. We will abstain because there is much contained in those amendments which happens to be our view but the fact that a lot of it is what we believe in and what we would like to be the reality does not mean that by asserting it is the reality unless somebody contradicts it we are actually any stronger than we are in the real world. We are as weak or as strong as we are whether we say and assert it and leave it to them to deny it or not deny it. It is true that I certainly did not take the position that he put to the UN merely as rhetorical questions, not requiring an answer. I thought the way that the Chief Minister had actually told them, "the people of Gibraltar are entitled to know what you mean when you talk about the light" that it was actually sort of saying to them "I challenge you to say that what you mean is, hand us over", which they did a very long time ago but which we would not expect them to do nowadays, frankly. They would have had no hesitation in giving us a straight answer if he had asked them that in 1967, I can tell him that. If he had said to them in 1967 "do you mean we are going to be Spanish by 1969?" he would have been told "yes" by 66 per cent of the Members because that was the vote.

We think that the British Government have been adopting a position of allowing the Spanish Government every year to explain, and we have done it when he has been there, in answer to his statements, that the annual consensus and the negotiating process flowing from it is the only way to decolonise Gibraltar and that the only way that that can be done is by tracking it all back to its roots and that its roots were a rejection of the right of Gibraltar to be decolonised in the normal way because there was a dispute and in fact there is no question about it. There is no question that that is how it all started. Regrettably, it should not have happened like that. The British Government, frankly, I think, misjudged their ability to carry the United Nations on this one and on the Falklands but they never felt the need, ever, to say in the UN "we are going to have a consensus resolution co-sponsored by ourselves and Argentina saying we will now start the negotiating process to discuss permanent solution to the problem of the Falklands in the light of the relevant resolutions of the United Nations". If we were to track those resolutions back the difference between Gibraltar and the Falklands, from 1964 to 1999 is that in the case of the Falklands they are still saying annually what they were saying about us in the 1970s, that the United Nations hoped that the two sides would get together and find a solution to the problem. They are still hoping that it should happen because it has not happened and they have stopped hoping in our case because as far as they are concerned it is happening. They welcomed it and they simply urged the two sides and when I say they "urged" the two sides let us face it, the two sides produced the text urging themselves to do it. The Chief Minister may feel that the failure of the British Government to give us a clear answer on the motion that I moved would have been helpful to the Spaniards because as far as the Spaniards were concerned that would confirm that Britain agrees with them in the way that Gibraltar has to be decolonised. I do not think the Spaniards have any doubt that the British agree with them. The only thing that they have not been able to get the British to move on has been the Preamble to the Constitution. That is the only thing, the British have shifted on every other thing they have defended in the past except that one thing and I do not think anybody in

Gibraltar has any doubt in their mind that that is the one thing that they will never move on. That is too embedded now. In all the statements that have been made they have never given the slightest indication. The only time that that particular element was questioned was in that disastrous Foreign Affairs Committee of 1981, the Kershaw Report which is the one that the Spaniards quote, where it was the only time that we have had a Foreign Affairs Committee of the House of Commons questioning the wisdom of the British Government having committed itself to the degree that it did in the Preamble to the Constitution. The implication of that was that perhaps we ought to think about it. The latest report of the Foreign Affairs Committee not only wished they had not done it, it wishes they would stop with the annual consensus negotiating process. There is a huge gap between the position that was taken before and the position that has been taken this last time which is much more in favour of Gibraltar and I think we need to press the United Kingdom in that direction. I do not believe this motion would produce that result for us. If the Government could not accept the other one because they felt it would be helpful to Spain, well that is enough for us not wanting to see it passed. Certainly nothing we bring to this House is intended to help Spain. I do not really think it would have helped Spain but I think that our view continues to be that we need to pin down the British Government and we do not believe these statements will do anything other than allow the British Government to continue to do what it likes doing best - to tell us what we would like to hear, to tell the Spaniards what they would like to hear and to do the same with the United Nations and hope that the thing carries on until better times, from their point of view, come along which will make us more amenable to being persuaded to move in the direction where, so far, they have been notoriously unsuccessful in persuading us, except for the odd voice now and again. We will be abstaining on the amendments rather than voting against them.

HON CHIEF MINISTER:

I suspect that we have both said what we pleased in both the motion and the main motion. I am just going to round up on my amendments and then if the hon Member wants to reply on the motion he is still free to do so.

Mr Speaker, the hon Member says that our amendment does not pin the British Government down but we believe it does, much more so than his. We believe his does not pin the British Government down because his is just asking some questions. His motion is "that the House of Assembly calls on Her Majesty's Government to publicly confirm the", and the British Government's response will be, "I do not make public statements in response to a call from the House of Assembly." How does calling on Her Majesty's Government to publicly confirm the British interpretation of the consensus resolution, how does that pin down the British Government. They are free to ignore it. *[Interruption]* I am glad the hon Member now appreciates the importance of incumbency because that is what we think the virtue is of ours. Ours does make it incumbent on the United Kingdom to reply whereas theirs does nothing of the sort. I see not even a drawing pin on their resolutions, still less anything that pins the British Government down. I am not saying that we have them in a triple Nelson on a count of ten but at least it makes it incumbent on them to reply. If they do not reply they know that we have stated that we are entitled to assume, not because we say so but because it is implicit in their statements and actions in the past that this is what they must mean. Mr Speaker, they might ignore it even though they do not agree with it, just as much as they might ignore the hon Members' call for clarification whatever their position might be. The difference is that if they ignore this statement they are tacitly confirming its contents and if they ignore the hon Member's statement they are just..... no one is any better or any worse off. The Spaniards could say "ah well, if the House of Assembly has called on the British Government to explain what the consensus means and the British Government has not, it must be because the British Government is frightened to explain it and that must mean that they agree with us". I want the Spanish

Government and Spanish public opinion and the Foreign Affairs Select Committee in the House of Commons to know that if they do not answer this it is because they agree with it. The hon Member ignores the concept of assent by silence. If they remain silent in the face of this, they will be deemed to have assented to it as opposed to simply not answering questions that they are asked in the form of questions which is what the hon Members..... if our statement does not put the British in a triple Nelson theirs does not even get them to the canvas.

The hon Member says that he knows, I know and everybody knows what the Foreign Office are and that he says that they have no integrity in the things that they say and they do. Mr Speaker, those are his words but I must still ask him if he knows all those things, because if he knows them and thinks that I know them and thinks that everybody else knows them, why is he bringing a resolution to this House asking three questions of the British Government? Why does he just not say "I think that the British Government, I think that the Foreign Office have no integrity whatsoever and when they say light they mean darkness, when they say relevant resolutions they are really talking about the resolutions about territorial integrity and when they say spirit of the United Nations what they mean is that the spirit of no partial territorial integrity". Does it mean recognition of our right to self-determination. It means denial. If that is what the hon Member thinks that he knows the Foreign Office position is, why does he not just bring the resolution to this House asserting that instead of asking the question? If he asks the question it is because he thinks he does not know the answer. If he knows the answer he should not be asking the question. I commend my amendments to the House.

HON J J BOSSANO:

Mr Speaker, I have been asked a number of questions. Why did I not bring a motion bringing any of those things like saying the British Government say one thing today and another thing tomorrow. The Chief Minister just before he sat down said if the things I have said about the British Government which I claim to

know and I claim he knows apparently I may be wrong about that. I just assumed that he knows.

Frankly, Mr Speaker, I doubt very much whether bringing a motion saying the British Government cannot be trusted on the question of the UN Resolutions and the position that they claim they hold with us and the position they signal to the Spaniards, I doubt whether that would have been passed in this House. Therefore, asking me why do I not bring it does not seem to be much use since the answer is it would not be passed.

What is consistent with my position is an assumption, which perhaps might be wrong, that in the time the Chief Minister has been dealing with the British Government on the question of decolonisation and on the question of constitutional proposals he has seen enough of them in the real light and not in the external appearances to have evaluated them in terms similar to the ones that I have described. Since he tends to smile and nod when I say this, when he is sitting down, I did not expect him to question the

HON CHIEF MINISTER:

If the hon Member will give way, what I would differ from the hon Member on not only in this but most importantly on this is the assertion to come to this House and to say the Foreign and Commonwealth Office have no integrity because they say one thing to us and a different thing to the Spaniards and they do one thing in front of us and another thing different to the Spaniards is not what we are discussing here, that is what he believes the position is in relation to the UN resolution. We do not agree with that thought but that might be the case in other things but it is not the case in this matter and certainly I would not choose to use those words even if they were true. I would like to find a more elegant way of making the point than the choice of those words.

HON J J BOSSANO:

The difference between us is that he agrees with our assessment of the duplicity in areas other than this one. I wish the people who he has come across who are not duplicitous in here should be made to deal with all the other things where they are duplicitous. The Chief Minister asked, when he spoke earlier, about the position in 1992. It is quite true that in 1992 I did not ask the United Nations to change the consensus nor did I ask them to change the consensus at any other date and that does not mean that I support the consensus because as well as not asking them I made it clear that we were condemning it and rejecting it. It is not that I did not ask them not to change it. Certainly in the first year I was extremely cautious in the approach. The Chief Minister should know, if he does not know, that in 1992 when we went to the United Nations we were taking a first step in a direction much of the stuff that we are all quoting nowadays was not in our possession. We went there completely in the dark without knowing what we were going to do. With the non duplicitous elements in the United Nations, according to him, telling us that it was a disaster to go and with the British representative in the United Nations who is the man responsible for looking after our interests saying that my presence in the United Nations was a great embarrassment to him and would spoil his warm friendship with Sr. Luis Yañez. I doubt whether the British Government or Her Majesty's representative in the United Nations who was then Sir David Hannay would ever say that in public but I can tell the Chief Minister that all he has to do is ask Ernest Montado who was sitting beside me when he said it. That is the kind of situation that we face with the people who are supposed to be looking after our interests. If he says that that is not their experience of them, well then good luck to him. I hope he does not fall flat on his face through trusting them too much.

Question put on the motion, as amended. The House divided.

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

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

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

The motion, as amended, was accordingly carried.

ADJOURNMENT

HON CHIEF MINISTER:

Mr Speaker, I have the honour to move the adjournment of the House sine die.

Question put. Agreed to.

The adjournment of the House was taken at 6.30 pm on Friday 26th November, 1999.