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 sub-section (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 Maastrict 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 dō 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), 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 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 Socialists 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 Gibraltarian 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 Gibraltarian 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 Gibraltarian Status to children of Gibraltarian 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 AZZOPARDI:

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 reccessed 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

Qustion 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.

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 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".

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 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 colum 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 convolutative 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 concensus 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 Kindom 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.