GIBRALTAR

HOUSE OF ASSEMBLY

HANSARD

25th February, 1999

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

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Thirteenth Meeting of the First Session of the Eighth House of Assembly held in the House of Assembly Chamber on Thursday 25th February 1999, at 2.30 pm.

PRESENT:

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

GOVERNMENT:

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

OPPOSITION:

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

IN ATTENDANCE:

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

PRAYER

Mr Speaker recited the prayer.

OATH OF ALLEGIANCE OF NEW MEMBERS

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

MR SPEAKER:

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

HON CHIEF MINISTER:

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

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

HON J J BOSSANO:

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

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

HON DR J J GARCIA:

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

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

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

STATEMENT BY CHIEF MINISTER

HON CHIEF MINISTER:

Mr Speaker, I would like to make a short statement on a matter, with your leave. I have received from the Falkland Islands Government the following letter addressed to the Hon P R Caruana, Chief Minister, Gibraltar. It is addressed to the Legislature and people of Gibraltar from the Council and people of the Falkland Islands and it reads: "The elected members of the Falkland Islands Council send their greetings and wish the people of Gibraltar well in their dealings with their neighbours. Please be aware of our support and understanding of the difficulties that you are experiencing at the moment. Yours sincerely. The Hon J Birmingham on behalf of the Legislative Council and people of the Falkland Islands". I read it out for the record.

CONFIRMATION OF MINUTES

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

DOCUMENTS LAID

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

Ordered to lie.

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

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

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

Ordered to lie.

ANSWERS TO QUESTIONS

The House recessed at 5.00 pm.

The House resumed at 5.30 pm.

Answers to Questions continued.

The House recessed at 8.10 pm.

FRIDAY 26TH FEBRUARY 1999

The House resumed at 10.40 am.

Answers to Questions continued.

The House recessed at 1.10 pm.

The House resumed at 3.05 pm.

Answers to Questions continued.

The House recessed at 5.30 pm.

The House resumed at 5.40 pm.

Answers to Questions continued.

BILLS

FIRST AND SECOND READINGS

THE EUROPEAN COMMUNITIES (AMENDMENT) ORDINANCE 1999

HON CHIEF MINISTER:

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

Question put. Agreed to.

ADJOURNMENT

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

Question put. Agreed to.

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

THURSDAY 18TH MARCH 1999

The House resumed at 3.00 pm.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC – Chief Minister
The Hon P C Montegriffo – Minister for Trade and Industry
The Hon Dr B A Linares – Minister for Education, Training, Culture and Youth
The Hon Lt-Col E M Britto OBE, ED – Minister for Government Services and Sport
The Hon J J Holliday –Minister for Tourism and Transport
The Hon H A Corby – Minister for Social Affairs
The Hon J J Netto – Minister for Employment and Buildings and Works
The Hon K Azopardi – Minister for Environment and Health
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The Hon A J Isola
The Hon J J Gabay
The Hon J C Perez
The Hon Dr J J Garcia

IN ATTENDANCE:

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

DOCUMENTS LAID

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

Question put. Agreed to.

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

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE EUROPEAN COMMUNITIES (AMENDMENT) ORDINANCE 1999

SECOND READING

HON CHIEF MINISTER:

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

The purpose of the Bill is quite straightforward in itself and it is to add to the definition of Treaties and to the definition of Community Treaties in the European Communities Ordinance, amendments thereto agreed in the Treaty of Amsterdam concluded in that city in June of last year. The new paragraph 1 indicates the part of the Amsterdam Treaty which relates to the European Communities and that is Articles 2 to 9, Article 12, and the other provisions of the Treaty so far as they relate to those Articles and all except one of the protocols to the Treaty. Articles 2 to 9 are the main parts of the Amsterdam Treaty which concern the Communities. Articles 2, 3 and 4 make substantive amendments to the three Treaties establishing the three Communities. Article 5 amends the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annex to the Council decision of the 20th September 1976, about which we all know something. Articles 7 and 8 make simplification amendments to the three Treaties establishing the three Communities to delete obsolete provisions and update some others. Article 9 repeals the Convention of the 20th March 1957 on certain institutions common to the European Communities and the Treaty of the 8th April 1965 establishing a single Council and a single Commission of the European Communities whilst saving their remaining extant provisions. Article 12 provides for the renumbering of the provisions of the Treaty on the European Union and the Treaty establishing the European Community.

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

I commend the Bill to the House.

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

HON J J BOSSANO:

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

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

In analysing the principles that the Bill reflects in its implementation, we have to go to what has been said in connection with the Amsterdam Treaty and its Protocols and I note that we are implementing all the Protocols except one and what was said when we appeared before the Foreign Affairs Committee of the House of Commons in 1997. I think in particular I want to draw the attention of the House to the fact that the provisions that we are implementing include the application of new Title 3A. In respect of new Title 3A we said in 1997 and we say it today that the United Kingdom is in fact in a position that in adopting Title 3A measures, it can be put in having to decide whether it stays out because of Spanish objections over recognition of Gibraltar or it abandons the defence of Gibraltar's position and proceeds on its own inside the participation of those measures. What it will not be able to do under the new Title 3A is in fact to hold up the measures for the whole of the European Union. We argued in 1997 that the effect of Title 3A was when aligned to the provisions of Protocol Y, the Protocol on the United Kingdom and Ireland, that this participation involves them giving notice that they are going to take part in a measure and that if within a reasonable period of time the measure cannot proceed with the participation of the United Kingdom, then the rest may proceed without. It is quite obvious that the position therefore is one where Spain can say, "we will veto this" and the United Kingdom will only retain a veto for a limited period which is not defined. When we appeared before the Foreign Affairs Committee of the House of Commons in November 1997 I put this argument to them then and I pointed out at the time that a research paper produced by the House of Commons library itself came to the same conclusion. On page 18 of that Research Paper of 1997 which is 97/83 it says "since all the measures under the new title are to be adopted by unanimity, the United Kingdom would acquire a veto during the negotiation process but only for a reasonable period of time. After this period, if agreement could not be reached with UK taking part, then the remainder of the Member States can adopt it and it would not apply to the United Kingdom." We have seen in fact that Spain has been willing to hold up Community measures not for a reasonable period, which is all this requires them to do, but for an indefinite period, in order to maintain its position of non-recognition of Gibraltar's institutions and therefore we believe that if where the United Kingdom has a veto as it has, and that the inter-Government agreements, it is not willing to exercise that veto but it has it, then in a situation where the veto is only there for a reasonable limited period of time, the odds are enormously increased against us and against our inclusion. The Chief Minister has pointed out that Title 6 measures which were not applied in Gibraltar on the implementation of the Maastricht Treaty in 1998 will not be applied by this Bill either but of course one of the things that the Maastricht Treaty does is to reduce the area of application of Title 6 Inter-Government Decisions, and those decisions that were previously inter-government are now coming under the new Title 3A. The fact that those will not apply to us because they are not Community obligations, does not have the same force as when the argument was put in 1998 because some of the areas that were agreed in the Justice and Home Affairs Council in May 1998 when we were left out of a range of Community Conventions, some of those are already being discussed, were being discussed last week in the Justice and Home Affairs council as passing under the new Title 3A. The transition from Maastricht to Amsterdam in the Justice and Home Affairs area was one of the major elements in the agenda of last week's meeting and this is reflected in the meetings that are public.In the discussion that took place, where the Home Secretary made public the intention of the United Kingdom to join, the provisions of Title 3A, the bulk of the measures under the new Title 3A, as well as some of the ones under the Schengen acquis, the material provided by the press office of the Commissioner dealing with the position of the United Kingdom explains in order to summarise the position that these areas of cooperation between Member States can take place in what they label three gateways. The first gateway is described as that of the Schengen acquis which is covered by the protocol on Schengen where the United Kingdom faces a Spanish veto on each measure. The gateway of Title 3A, where the United Kingdom has a veto for a limited period and then loses it, and the balance what remains still as inter-government which is what was there under Title 6 of Maastricht and where the United Kingdom continues to have a veto but has shown no inclination to use it in our defence. Consequently, we are now facing what I believe has been described as a position where

there can be a progressive erosion of our rights within the European Union, and it seems to me that the worst possible scenario that we could have is the one that we have because I have not heard anybody saying that we can actually opt out. That is to say, it seems to me that the situation we finish up in is one where the United Kingdom determines what it wants to opt into having determined it wanted to opt out initially and it tries to take Gibraltar with it. Gibraltar is not given, at that stage, as it ought to have, the opportunity of taking its own decision independent of the United Kingdom as to whether it wants to opt in or it does not want to opt in. The United Kingdom then seeks to negotiate our entry in such measures with our own institutions being recognised to carry out the functions they have always carried before. Spain can and will raise objections on the grounds that she raises objections constantly that by having duplicate institutions in Gibraltar we are being treated as if we were the equivalent of a sovereign state and that therefore this is detrimental to its claim over Gibraltar. In that process, and this is apparently what happened between 1997 and 1998 in the inter-government Justice and Home Affairs Conventions, in that process at one point the United Kingdom decides that the only way to overcome Spanish objections is that Gibraltar should stay out. Here we have a situation where it is Spain that decides what we are in for and what we are not in for, it is not even UK anymore. I am not sure that it always has been. I would like to have my nose pointed in the direction as to where it has always been between 1986 when they joined and 1987 when they left us out of the Airport deal and subsequent to 1987 until 1998 when they left us out of the Convention. In between I have no recollection of any other areas that Gibraltar has been left out of, other than the ones that were amendments to the airport situation where the United Kingdom accepted the repetition of the 1987 Airport Exclusion clause. The only exclusion that I am aware of is the 1987 Airport Exclusion clause which has been repeated in a number of subsequent directives and regulations. If they left us out of others then they have got away with leaving us out without telling anybody here. I believe that we should expect to have confirmation from the Government in the House as to whether the assurance that the Chief Minister was trying to get the support of the Foreign Affairs Committee on in November 1997 has been given or not been given because in November 1997 he said "although we are assured that she would not be entitled to do so, should Spain attempt to exclude Gibraltar from measures to be drawn under the new Title 3A, in the field of visas, asylum, immigration and other policies relating to the free movement of persons which include external foreign control, police and judicial cooperation, Her Majesty's Government will ensure that Spain's attempt will not succeed". He asked the Foreign Affairs Committee to do this for Gibraltar. Let me say for the record that when we met the Foreign Affairs Committee yesterday we pointed this out to them, reminded them of it and told them that if they had not asked for such an assurance from Mr Cook on the last occasion, they should do it on this occasion. But of course if the assurance has been given then I think it should be in the public domain and it should be on the record in the House and then we can see whether it is honoured when the time comes or not. In the absence of such an assurance, then it seems to me we are implementing in the House the application of the Treaty in the knowledge of all the dangers it contains without any way of being able to protect ourselves from its consequences and in the hope that the magnanimity on the part of our neighbour will not lead to too draconian an effect on Gibraltar when different measures are considered. I think that apart from the fact that many of these measures affect individual rights and if we are talking about the purpose of the Treaty of Amsterdam, coming on top of the Treaty of Maastricht in amending the original Treaties so as to reflect in what is the constitution of the Union, our rights as citizens of the Union, then it seems to me our rights are being marginalised as much in the exclusion from these measures as they were in 1976 in the exclusion of our right to vote. If we have a situation where the right of a person that has got a matrimonial problem to be able to obtain redress by a judgement of a court in any Member State being enforceable in any other Member State and in Gibraltar that is not a right that exists because we have been left out of the relevant Convention, even though the UK could have vetoed it. The UK could have vetoed that Convention in the inter-government conference in May last year. What will they do when they cannot veto it any more under Title 3A?

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

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

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

HON CHIEF MINISTER:

Mr Speaker, with the greatest of respect for the Leader of the Opposition he says that we are voting for provisions, he says that we are voting for the implementation into Gibraltar law of a treaty which has provisions which are capable of being operated in the future contrary to our interests. What he does not appear to appreciate and when he says, "let us put up a fight", Mr Speaker, I do not shirk as he has found to his cost, I do not shirk from fights, what I shirk from is from fights that I cannot win. In other words, I do not enter into fights which I cannot win not because I do not have the courage or because Gibraltar has not got the courage or because we do not want to take the pain of the fight, but because there is simply no ground upon which to fight. Mr Speaker, he must know that the United Kingdom is the country that enters into international obligations on behalf of Gibraltar in this case and that when the United Kingdom, given our EU status, unless what he wants to do is that he wants to put ourselves outside the European Community but when the United Kingdom signs up the Treaty of Amsterdam, warts and all, and it has warts, I shall come to that in a moment as far as Gibraltar is concerned, but when the United Kingdom Government signs up to the Treaty of Amsterdam in the circumstances which he knows and of which I will remind him in a moment, it was signing up to that for Gibraltar and for the United Kingdom. Gibraltar is already bound by the Treaty of Amsterdam and we are not in this Bill in this House today choosing to incur liabilities. We are not choosing to incur obligations which we are at liberty to choose not to incur. All we are doing is changing a law in Gibraltar which lists which are the European Union Treaties by which Gibraltar is bound. We are amending that Bill to add to the bottom another one by which we are already bound. The hon Member knows what we are doing here. He knows that the Treaty of Amsterdam has been entered into by the United Kingdom. That it binds Gibraltar and that we are not by this Bill agreeing to or accepting the provisions of the Treaty because we are not required to. This is an international Treaty which has direct application in Gibraltar and what we are doing is including this Treaty in a definition of Community Treaties which appears in our European Communities Ordinance. Therefore, the suggestion that by failing to pass this Bill we are putting up a fight or we are making a point is just not correct, Mr Speaker. Gibraltar is part of the European Community. We are part of the European Community on the terms that the 15 Member States agree either in the Treaty establishing the Community or in the Treaty establishing the Union. They have done that and those are the new rules for the European Community, whether we like them or not and those are the terms upon which Gibraltar is a part of the European Community whether we like it or not and the idea that by not implementing this Bill we are somehow holding out against or we are somehow keeping at bay obligations that we do not think are fair on us is just not a correct analysis, either of Gibraltar's status within the European Community or indeed of the purpose of this Bill which has nothing to do with that. I believe that the hon Member understands that point although he may not agree with it.

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

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

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

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

worse off as a result. It is not true that Spain now chooses, and he emphasised the word "now", it is not true that Spain now chooses the bits of this that we can participate in because all these things were previously in the Third Pillar in which Spain always chose, if the hon Member wishes to so describe it, because Spain has always had the ability in the Third Pillar to say to the other Member States "well, I am not agreeing to this agreement unless the United Kingdom excludes Gibraltar" or "I am not agreeing to this Third Pillar inter-governmental agreement unless the United Kingdom agrees to include Gibraltar but without any competent authority rights". I make these points, Mr Speaker, because that is precisely what happened in the three agreements, the Eurodac Convention, the European Judicial Network and the Driving Disqualification Convention. These were inter-governmental agreements under the Third Pillar requiring unanimity as it has always done since Maastricht. Spain actually did not seek Gibraltar's exclusion from those measures. Spain did not say "I will veto this unless Gibraltar is territorially excluded, unless this Convention does not apply to the territory of Gibraltar". What Spain did and did from the beginning, except that the United Kingdom said that she was standing firm against for nine-tenths of the negotiation and then at the end gave in, what Spain was saying is "we will not allow the Community to enter into these three agreements if Gibraltar is included on terms that the competent authority for the implementation of these three measures in Gibraltar is the Gibraltar authority". So, for example, in the European Judicial Network Convention, Spain did not want the Supreme Court of Gibraltar to be one of the Courts with which Courts of other Member States could communicate. They wanted the communications in respect of Gibraltar to be with a High Court in England or with whatever Home Office authority..... and so on, in respect of the Eurodac Convention which as the hon Members will remember related to a common computer base of fingerprints for immigration asylum. The Spanish view was that the RGP and Gibraltar Immigration authorities could not be plugged into this computer and Gibraltar had to send its fingerprints to London where the Metropolitan Police or the Home Office or whoever does this in England. Similarly with driving licences, Spanish courts were not willing, Spain was not willing, that disqualifications in Gibraltar should be recognised and the Government of Gibraltar, with the full support of the United Kingdom Government throughout the negotiations said "look, why should Gibraltar accept this? This is a derogation from our constitutional autonomy in these areas. We do not know how many hundreds more such inter-governmental agreements there are going to be over the next umpteen years and if we give up our right to be competent authority in respect of Gibraltar on each of them the time will come when there will be nothing left for the public administration of Gibraltar to do". The British Government agreed with that line and held firm and then at the eleventh hour the Home Secretary decided that these measures were far too important to allow to be lost for the whole Community simply because of the Gibraltar competent authority point and put it to me that the United Kingdom was going to accept language which not only did not provide for a competent authority for Gibraltar, which would have been bad enough, but that prohibited the United Kingdom Government from appointing a competent authority in that part of the UK Member State known as Gibraltar. I said to the British Government "I have my own interests in this matter which I am not willing to surrender but what I am surprised is that you are willing to allow foreigners to tell you what administrative arrangements you may and what administrative arrangements you may not make in respect of your overseas territory of Gibraltar". But the Home Secretary was intent on doing so and therefore the choices available to the Government of Gibraltar were either to agree to have the Conventions..... the hon Member knows that when the United Kingdom does international agreements they always ask or, in most cases, they ask the local Government whether we want to be included or not and inter-governmentals are not different in the EU. We were faced with the choice either of being included on terms that Gibraltar could not have a competent authority or to say to the United Kingdom "if those are the only terms upon which you are willing to include Gibraltar we would rather not be included" and we opted for the latter. The hon Member says that he is not aware that this had happened before thereby suggesting that somehow something bad for Gibraltar started to happen whilst I was Chief Minister which never used to happen when he was Chief Minister. Mr Speaker, the hon Member must know, and if he does not I am surprised and it bears out my opening remarks about which they giggled, but the hon Member must know that the three inter-governmental agreements that I have just described which were not extended to Gibraltar for the reasons that I have just described, were the first Third Pillar agreements entered into since Maastricht. It has never happened before because there has never been an opportunity for it to happen before, not because these things were done well by him and badly by me, it is because it is a new issue, it is because it is a new matter, it is because it is a new threat to Gibraltar which never used to materialise. I am surprised that the hon Members think that this point is completely irrelevant to the debate or are they just trying to make enough noise in the hope that this point will be lost in the cackle of giggles because this point is central to the complete incorrectness of the hon Member's statement. This has never happened before because this

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

HON J J BOSSANO:

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

MR SPEAKER:

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

HON J J BOSSANO:

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

MR SPEAKER:

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

HON J J BOSSANO:

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

MR SPEAKER:

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

HON J J BOSSANO:

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

MR SPEAKER:

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

HON J J BOSSANO:

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

MR SPEAKER:

I am not going to allow it any more.

HON J J BOSSANO:

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

MR SPEAKER:

Sure, sure, those are the rules.

HON CHIEF MINISTER:

The hon Member is mistaken but before I tell him the principal reason why he is mistaken let me tell him that I also think he is mistaken in saying that we are debating a Bill that is very serious for Gibraltar. We are not debating a Bill that is very serious for Gibraltar, because whatever he thinks may be very serious for Gibraltar has been the case since the 17th June 1998 and does not arise from this Bill. Failure by this House to pass this Bill does not insulate Gibraltar from any of the serious things which he says are around the corner. The serious thing, if there is one, is not this Bill. He is mistaken, Mr Speaker, because he does not appear to be aware that under Title 3A, if the United Kingdom decides to participate, she has the same right as everybody else. The United Kingdom's limited veto, if that is what he wants to call it, is only limited to the circumstances in which, in effect, she is not going to participate. So, the position of the UK is the same as everybody else if she intends to participate. The suggestion implicit in what the hon Member is saying that other Member States have got further rights or rights to keep the veto for a longer period of time than the UK if the UK indicates that she is going to participate in the measure is not correct, Mr Speaker. Let me explain to the hon Member, time is going to tell on the sort of things that the Foreign Secretary is reported in today's Gibraltar Chronicle, time will tell on such things as Schengen but time will not tell on such things as this because these are First Pillar measures and if the United Kingdom decides not to participate then the point becomes academic for Gibraltar because we would not be participating either. If the United Kingdom decides to participate, she will then not, if what has been the United Kingdom's position since the Airport Agreement, has been repeated, Gibraltar has not been excluded from any First Pillar measure since the Airport Agreement. I think we can agree on that. This will be the first exclusion of Gibraltar from a First Pillar measure, a Community measure, as opposed to an inter-governmental. Therefore, if the United Kingdom is going to participate in that First Pillar measure, the whole of the Member State United Kingdom is entitled to participate and that is precisely what I was asking the Foreign Affairs Committee to guard against in what he calls this reference to an assurance. I know that he has mentioned that to the Foreign Affairs Committee because they have raised it with me, Mr Speaker. If he looks at the page of my evidence there to the Foreign Affairs Committee, whenever it was that he and I gave evidence last year, he will see that in all those numbered paragraphs, one, two and three, were requests by me for vigilance on the part of the Committee. Can the hon Member see that that is the preamble? And when I said although we are assured that she will not be entitled to, it goes on to say "I would ask the Committee to remain vigilant..." what I was saying is "the United Kingdom says to me Spain is not entitled to demand Gibraltar's exclusion from a First Pillar measure". Spain has no entitlement to demand Gibraltar's exclusion from any Community measure, as opposed to a Third Pillar inter-governmental agreement but as we know that she has already done so once, in the case of the Airport Agreement, in other words, notwithstanding that Spain has no entitlement to demand it, the United Kingdom can still choose notwithstanding that Spain has no entitlement to demand it, as the UK can choose to exclude us from a First Pillar agreement as she did in the Airport directive which were First Pillar and without Spain being entitled to demand it, the United Kingdom nevertheless chose to do so, in that paragraph what I am saying is if he reads it correctly is that I am saying "although we are told by London, although we are assured by London that Spain has no entitlement to demand our exclusion please be careful in case HMG does another Airport Agreement on us and agrees to exclude us". I think he will see that that is what that paragraph, which I have not got in front of me but which I recall and I

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

HON J J BOSSANO:

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

HON CHIEF MINISTER:

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

HON J J BOSSANO:

Mr Speaker, I have to say that the point about the new Title 3A is that in answer to a question in September 1997 the Chief Minister was making the same distinction although then he said that the fact that the United Kingdom wanted to join in Title 3A in a First Pillar measure from the beginning meant that Spain could in no way veto UK participation. The point that I made then and I am making now and I believe the latest position explained in the statements issued following what the Home Secretary had to say confirms that whereas the United Kingdom can take part as of right in the new First Pillar title 3A measures which could well be what was, until now, a Third Pillar measure, that is to say the Convention that he has mentioned could in fact become First Pillar as a result of this and we are out of them. I can tell the Chief Minister that in the Minutes of the last meeting of the Justice and Home Affairs Committee discussion took place on the transition from Maastricht to Amsterdam in the areas of Title 3A measures which will cease to be Third pillar and will become First Pillar and, for example, the Brussels 2 Convention was one of those mentioned which was being discussed in May 1998 and which we were being left out of and which has not been finalised and it was mentioned on the basis that the only obstacle was the "Gibraltar problem" and the territorial applicability. The minutes are on Internet, anybody can see them. We do not get them because the Foreign Office considers they are still secret but if one has a computer it is okay. In the statements that were made it was said that although the United Kingdom has this right under Title 3A First Pillar, if in exercising the right to join... the very fine distinction that the Chief Minister draws between wanting to join and not wanting to join does not seem to have penetrated into the minds of the other Member States because the statement from the Commission says that if they opt to join but they are unable to get the unanimity of the partners, after a period the partners go on without them even though the UK wants to be in. That is the point I was making in 1997 when I put the question to him and he said there was a distinction between wanting to come in at the beginning and wanting to come in at a later stage. I believe that that should be clarified at this stage because the statements that have been made indicate that there is no such distinction, that is why I am making the point that I am making. I hope I am being helpful.

HON CHIEF MINISTER:

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

Mr Speaker, just to round off, I would just like to correct the hon Member, this is a convenient opportunity. If the hon Member remembers and in a sense this is the major political difference between us, although I accept that there is also another much smaller difference in terms of how these things are going to work in the detail, the hon Member wants, in his public statements, to give the impression that the Government is wrong and the Opposition was right. In other words, what they warned about back in June has turned out to be right. The hon Member said on television, for example, amongst the many inaccuracies in his latest television interview about which I will correct him in public as soon as I can find the time to sit down and answer him, but one of the ones that comes to mind is..... "the Chief Minister told us all in the European Movement AGM that we are secure, and we said and I said that we were not and he said that I was being alarmist and you see I have turned out to be right". The European Movement Annual General meeting was in May and the Amsterdam Treaty, particularly the things that went into it that we did not like, was in June. What I told the hon Members, not just the hon members, I was addressing the European Movement Annual General Meeting in May, before the Amsterdam Treaty, before the night of Amsterdam, was that the Government of Gibraltar had seen these difficulties, these potential difficulties, we had pointed them out to the British Government, the British Government had assured us that the position would be protected and then, notwithstanding that, and I said on the 27th or 28th of May, I said "on the basis of what we had found, on the basis of what we had pointed out to London and on the basis of what London had said to us is going to be the position that they are going to keep in the Treaty, we were secure". Remember that there had been several drafts published and that the position contained in the last draft the Government of Gibraltar had seen did not give Spain, for example in relation to Schengen, the veto and that is the position that we were aware of when Mr Cook and Mr Blair went off to Amsterdam with this draft under their arms which was okay. When they got to Amsterdam we all know what happened on the night in question. We can all speculate whether it was an accident or whether it was that they took their eye off the ball or whatever. The fact of the matter is that as neither I was there, nor would he have been there sitting in Amsterdam in the Summit Room next to the Prime Minister preventing him from agreeing at the eleventh hour something which was not in the last draft of the document, the last draft of the document was changed. It is not true that the situation was insecure on the night that I spoke at the European Union Annual General Meeting which was before Amsterdam. The insecurities crept in on the night of Amsterdam and what happened was that the basis upon which we had seen the Foreign Secretary and the Prime Minister go off to Amsterdam, having left the point secured were destroyed by the ground that they gave wittingly, or unwittingly, on the night of the signature of the Treaty in Amsterdam on whatever day in June 1997. Therefore, the hon Member to claim authorship of a warning that I was explaining to them three days before the Amsterdam Treaty was signed of which issues they were not even then aware because they had not seen the draft of the Amsterdam Treaty, for the hon Members to claim authorship of the warning then... I take no consolation from who gave the warning or who did not give the warning, as far as I am concerned that is completely irrelevant but I think it is less than available to the Opposition Member to claim ownership of the warning and, worse still, to suggest that what may now happen is not precisely what the Government, not only had warned might happen, but invested a lot of time and effort with the British Government in the run up to Amsterdam Treaty signing to insulate and protect Gibraltar from. The fact that we are not insulated and protected from it is not due to lack of vigilance on the part of the Government of Gibraltar. It is due to the fact that the Government of Gibraltar was not sitting on Mr Blair's lap on the night of the Amsterdam Treaty to prevent him from putting pen to paper to a document which was markedly different to the one that existed three hours before that meeting started. I think that the hon Member even wearing his Opposition's hat and using every fact as it is legitimate for him to do in an attempt to bring the Government into discredit in the eyes of the electorate from the Opposition benches, even he cannot possibly blame the Government for lack of vigilance in those circumstances.

Question put. The House voted.

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

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

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

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

HON CHIEF MINISTER:

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

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Ordinance implements Council Directive 95/21/EC as amended by Council Directive 98/25 and Commission Directive 98/42/EC concerning the enforcement in respect of shipping using Community ports and sailing into our waters. Mr Speaker, Opposition Members may recognise this as a Bill upon which they were working at the time of the last Election. The Ordinance applies to ships which are not British ships calling at or anchored off Gibraltar and offshore installations. It provides for inspection of those ships to ensure they are complying with the various international conventions which they will find listed under the definition of "Convention" in Clause 2 of the Bill. Mr Speaker, under Article 5 of the directive there is no obligation upon Member States to inspect 25 per cent of ships calling into port at the Member State. Hon Members will see that the way that the proposed new section 132D, subsection (i) is drafted does not mean that we are going to inspect 25 per cent of the ships calling at Gibraltar because we are taking the view that what we need to do is to inspect such number of ships entering the port and to which this part applies as may be specified by the Minister and then it goes on to say "...and which will result in compliance in respect of Gibraltar with the obligation placed on the Member State United Kingdom". In other words, a fair allocation of the whole UK Member States, 25 per cent, Gibraltar's quota of that is going to be much fewer than 25 per cent of the ships visiting Gibraltar and that is why that option has been chosen. In addition, hon Members will note the provisions which I will not explain for reasons which I will happily communicate to them in confidence, but I would point out to them the provisions of section 132D subsection (v). Mr Speaker, that is important in connection with the bunkering trade.

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

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

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

HON A ISOLA:

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

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

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

HON J J BOSSANO:

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

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

MR SPEAKER:

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

HON CHIEF MINISTER:

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

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

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

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

HON A ISOLA:

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

HON CHIEF MINISTER:

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

The hon Member then made a point about the recognition of certificates. Mr Speaker, there he raises the whole issue of the politically-motivated challenge that Spain, but nobody else, makes to Gibraltar issued documents. Of course, one cannot say how this is going to work out in practice in relation to Spain. What is certainly true is that these are not the first certificates. This is not the first time that the Captain of the Port obtains powers to issue certificates. The Captain of the Port is issuing trading certificates, indeed Certificates of Registration, let alone Trading Certificates, to British shipping registered in Gibraltar and has been doing that since we have had a Merchant Shipping Ordinance. Spain has never withheld recognition of shipping-related certificates, whether they be Registration Certificates or whether they be Trading Certificates, Health and Safety Certificates issued by the Captain of the Port but of course I cannot pre-empt when this issue might be added to the list of documents that they may wish to challenge. Mr Speaker, there is no question, as far as the Government are concerned, the consequences would be enormous for Gibraltar not issuing certificates unless all of the 15 Member States have agreed to recognise them. Even the Spanish authorities are constantly recognising certificates and documents issued in Gibraltar by competent authorities. For example, Driving Licences issued in Gibraltar or when the Health Authority issues a Form E111 in connection with reciprocal delivery of health service treatment. The Health Authorities are acting as the competent authority for Gibraltar in the context of that Community directive and therefore the appropriate administrative body in Gibraltar, whichever it might be, depending on the subject matter, is constantly acting as competent authority in the administrative sense in any number of measures and indeed this is what lies at the root of the whole issue. So, Mr Speaker, clearly we do not expect non-recognition of these certificates. There is no historical suggestion that shipping certificates will not be recognised and certainly other Member States have never shown an inclination not to recognise Gibraltar-issued certificates in this or any other matter. I cannot tell the hon member whether this particular directive has or has not been transposed in Spain. I did not recognise it on the list that I had in my hand on which they are under infraction proceedings. I can only suppose that they have done so, nor can I tell the hon Member whether they are complying or whether indeed anybody is complying with the requirement to inspect 25 per cent of ships that visit their ports. One does not see an awful lot of evidence of it and therefore it may be that they are not. Mr Speaker, I am grateful that the Opposition shares the Government's interests in the Port of Gibraltar maintaining the highest standards in relation to international shipping. This Bill reflects further progress on Gibraltar's part in that respect as indeed it is also reflected in the Government's policy in relation to pollution control where the Government are in the process of establishing in Gibraltar a sophisticated pollution response capability so that the port of Gibraltar, whether it is Registry matters, whether it be Port State Control matters, whether it be safety matters or whether it be in pollution control, will be a port of the highest European standards and the hon Members are aware

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

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

Mr Speaker, I do not see the contradiction that the Leader of the Opposition sees in this business of how this would work. He speaks about Gibraltar's obligations under the directive. Article 5 does not impose... and here we are in one of those areas of Community directive requirements where we are not talking about qualitative obligations but quantitative obligations. When one talks about quantitative obligations, in other words, thou shall inspect 25 per cent of shipping, this is not addressed to Gibraltar separately from the UK. The directive imposes obligations, in the first instance, on the UK and Gibraltar is required to comply with those directives by virtue of that fact. The view has been taken, the hon Member is right. This formula was on the file and had been discussed between the Law Draftsperson in the hon Member's Government, with the Coastguard Agency, so this formula is not one that we have devised, it is one that we have selected from the two formulas that we found on the file from that time where I understand there was close consultation and I think that it is not a correct analysis to take the view that Gibraltar and the UK must be treated separately. The obligation is the UK Member State. The Community regards Gibraltar as part of the UK Member State for such purposes and therefore we envisage no difficulty and we have not been given any reason to believe that the Maritime and Coastguard Agency envisages any difficulty in the application of this formula. But let me say, Mr Speaker, for the comfort and satisfaction of those involved in this business that even if it were 25 per cent of our shipping, given the provisions of the sub-section that I have pointed out to the Opposition Members, not even that would be particularly onerous. In that sense the point is academic, it does not affect the extent to which this piece of legislation will impact in an adverse sense on the industry in Gibraltar.

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

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

The House recessed at 4.45 pm.

The House resumed at 5.10 pm.

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

HON P C MONTEGRIFFO:

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

Question put. Agreed to.

SECOND READING

HON P C MONTEGRIFFO:

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

I take this opportunity, Mr Speaker, of thanking the Financial and Development Secretary for the functions he has discharged historically and indeed his predecessors. We expect that the legislation will come into effect probably some time in April or May when the full transfer of staff is effected and the premises to which they are being transferred, also fitted out. I commend the Bill to the House.

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

HON A ISOLA:

Mr Speaker, the one point that concerns the Opposition in respect of this Bill is the traditional roles that have been taken by the Minister of Trade and Industry in his Department and the Financial and Development Secretary in that there has always been a line between, if one likes, the marketing role and the licensing role. In transferring the responsibilities for issuing these certificates we see no benefit which can be achieved by putting into the domain of the marketing team, which is in effect what the Finance Services Director is, the same responsibilities for actually issuing the certificates. We will not be voting against the Bill, Mr Speaker. We will wait and see what happens and how it develops. Obviously it is a matter of Government to decide as to what they feel is best but certainly we believe there is a line between the marketing aspects and the issuing of the different certificates or licences issued, we believe that there is a distinction to be drawn there and for those reasons we will be abstaining on the Bill.

HON P C MONTEGRIFFO:

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

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

Question put. The House voted.

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

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

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

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

Question put. Agreed to.

THE DEPOSIT GUARANTEE SCHEME (AMENDMENT) ORDINANCE 1999

HON P C MONTEGRIFFO:

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

Question put. Agreed to.

SECOND READING

HON P C MONTEGRIFFO:

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

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

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

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

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

The Government are happy to go along with what the Association wishes and propose to give effect to it by this Bill. These minor changes will enable the Scheme to be put into place in Gibraltar without further delay. I commend the Bill to the House.

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

HON A ISOLA:

Mr Speaker, the question I would ask here is, when the Bill came through in 1997 as part of a series of Bills to give effect to the passporting potential of the banking sector, the Minister has referred just now to the UK having to enact secondary legislation in order to enable this to happen. Is the Minister aware of a time scale within which that will be expected to happen? Secondly, whether the changes other than the one that he has referred to requested by the Bankers' Association, namely the system for determining the amount of money that will have to be paid into the pot by the respective banks in the event of a claim; other than that, are there any other items within the Bill that is being brought in as a result of that passporting process? Or are they all technical corrections or amendments to the Bill that were not foreseen at the time? The principal question really relates to the comment made as to the secondary legislation in the United Kingdom and what has changed since this original Bill came into the House to now in those arrangements on the passporting. It seems a little bit unclear and there seems to have been a change and I would be interested to see what that is.

HON J J BOSSANO:

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

HON P C MONTEGRIFFO:

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

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

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

HON J J BOSSANO:

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

HON P C MONTEGRIFFO:

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

Why was the Bill brought in in 1997 without the structure in place? I believe the answer to that is, but I would have to confirm it with the FSC to ensure there is no other new answer to this, but I believe the position was that we were keen to introduce the Deposit Guarantee Scheme as soon as possible and therefore in advance of the secondary legislation having been put in place in the United Kingdom we were prepared to make the UK branches participants in the Gibraltar scheme, albeit on an interim basis. Now that we are very close to getting the UK legislation passed, banking passporting for the UK in place, the moment is right to enact this legislation which will take out the UK branches, but that provision will not be possible to be brought into effect and will not bring in, I think it is section 2, of this Ordinance until the secondary legislation in the UK has been enacted. Who will be left in the Gibraltar scheme? Gibraltar banks will be left in the Gibraltar scheme, namely Gibraltar incorporated banks. Branches of other EEA territories will obviously form part of the Deposit Schemes of the other territories, and of course there is a small pool of Gibraltar incorporated banks. Some of the international banks operating in Gibraltar do operate under a subsidiary structure, namely a Gibraltar incorporated entity rather than through a branch although there has been, on a number of occasions recently, hon Members might recall legislation brought to the House where activities had to be moved to a branch rather than to a subsidiary but, in a nutshell, what will be left in Gibraltar will be the Gibraltar incorporated banks. I think I have covered the points raised.

Question put. Agreed to.

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

Question put. Agreed to.

THE INCOME TAX (AMENDMENT) ORDINANCE 1999

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to amend the Income Tax Ordinance so as to substitute the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette for the Financial and Development Secretary in the granting of qualifying certificates to companies and individuals be read a first time.

Question put. Agreed to.

SECOND READING

HON P C MONTEGRIFFO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the background to this Bill is identical to that in respect of the Companies (Taxation and Concessions) Bill which the House has just

dealt with. As in the case of the previous Bill it replaces the Financial and Development Secretary with the Finance Centre Director in the discharge of the duties under the Ordinance. The grant of qualifying company status in particular is a very important part of the fiscal incentives available in Gibraltar and in the Government's judgement it is proper and appropriate for those functions to be discharged by the Unit charged with development and strategic responsibility for financial services. I commend the Bill to the House.

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

HON A ISOLA:

Mr Speaker, our reasons for abstaining are exactly as they were in respect of the Companies (Taxation and Concessions) Ordinance Bill and therefore there is nothing I wish to add.

Question put. The House voted.

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

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

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

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

Question put. Agreed to.

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

HON J J HOLLIDAY:

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

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

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

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

HON J C PEREZ:

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

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

HON J J HOLLIDAY:

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

HON J C PEREZ:

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

HON J J HOLLIDAY:

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

HON J C PEREZ:

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

HON J J HOLLIDAY:

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

Question put. Agreed to.

The Bill was read a second time.

HON J J HOLLIDAY:

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

Question put. Agreed to.

THE EMPLOYMENT (AMENDMENT) ORDINANCE 1999

HON J J NETTO:

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

Question put. Agreed to.

SECOND READING

HON J J NETTO:

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

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

HON J L BALDACHINO:

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

HON CHIEF MINISTER:

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

HON J J BOSSANO:

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

HON J J NETTO:

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

HON CHIEF MINISTER:

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

HON J J BOSSANO:

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

HON CHIEF MINISTER:

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

HON J J NETTO:

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

Question put. Agreed to.

The Bill was read a second time.

HON J J NETTO:

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

Question put. Agreed to.

THE MEDICAL AND HEALTH (AMENDMENT) ORDINANCE 1999

HON K AZOPARDI:

I have the honour to move that a Bill for an Ordinance to amend the Medical and Health Ordinance 1997, to transpose into the law of Gibraltar Commission Directive 98/63/EEC and to effect minor amendments be read a first time.

Question put. Agreed to.

SECOND READING

HON K AZOPARDI:

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

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

HON MISS M I MONTEGRIFFO:

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

Question put. Agreed to.

The Bill was read a second time.

HON K AZOPARDI:

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

Question put. Agreed to.

THE ANIMAL EXPERIMENTS (SCIENTIFIC PROCEDURES) ORDINANCE 1999

HON K AZOPARDI:

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

regarding the protection of animals used for experimental and other scientific purposes and to prohibit public displays of regulated procedures and the use of neuromuscular blocking agents in the course of such procedures be read a first time.

Question put. Agreed to.

SECOND READING

HON K AZOPARDI:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill transposes into Gibraltar law directive 86/609/EEC as I mentioned when I first introduced this giving effect to Community obligations on the approximation of laws and administrative procedures on experimental and scientific methods used and the purposes to protect animals. It prohibits public displays of regulated procedures and the use of neuromuscular blocking agents in the course of such procedures. I am not aware that animals have ever been used in Gibraltar for experimental and other scientific purposes and it may well be the case, certainly my hope, that no one will ever have any future plans to do so. Nevertheless, it is a Community obligation to transpose this directive and in any event useful to make the law clear in this field for the future. Perhaps it is useful for the House if I just outline the basic purposes and highlight certain sections. Clause 4 of the Bill is in particular important since it defines the experimental or other scientific procedures to be applied to protected animals which may have the effect of causing that animal pain, suffering, distress or lasting harm. Clause 5 makes it a requirement for the person to hold a personal licence. Clause 7 provides for the grant of project licences which set out the programme of work for specified regulated procedures to animals of specific descriptions at a specified place or places. Clause 8 makes it a requirement that no place shall be specified in a project licence unless it has been designated by a certificate issued by the Minister under that clause. The breeding of protected animals is prohibited by Clause 9 unless the place has been designated by a certificate issued by the Minister as a breeding establishment. Before granting a licence or certificate the Minister will consult an inspector appointed under the Ordinance or an independent assessor of the Animals' Procedure Committee set up under the Ordinance. Mr Speaker, provision is also made for the variation or revocation of licences or certificates and the suspension in case of urgency. Representations may be made to the Minister in such instances. There are also clauses allowing for the re-use of protected animals and for the killing of animals at the conclusion of regulated procedures. Schedule 1 sets out the appropriate methods of humane killing. There are also provisions protecting confidential information, granting power of entry and regarding the need for consent by the Attorney-General before proceedings for an offence are brought under the Ordinance. I commend the Bill to the House.

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

HON J GABAY:

Mr Speaker, with the Chief Minister resting in the Ante Room I do not believe that this Bill is going to lead to any heated controversy. Also, I do not think we are in danger of any infractions against this Bill since we do not indulge in any way in animal experiments, however, this is one more of these Bills which is not relevant to our community which we have to keep on putting through and which I presume is a rather costly affair. My other regret is that in showing compassion for animals we seem not to include the poor fish among our coasts. Nevertheless, of course, we do support here the noble intentions of this Bill and we will support it.

HON K AZOPARDI:

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

Question put. Agreed to.

The Bill was read a second time.

HON K AZOPARDI:

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

The House recessed at 6.22 pm.

The House resumed at 6.30 pm.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

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

1. The European Communities (Amendment) Bill 1999;

2. The Merchant Shipping Ordinance (Amendment)(Port State Control) Bill 1999;

3. The Companies (Taxation and Concessions)(Amendment) Bill 1999;

4. The Deposit Guarantee Scheme (Amendment) Bill 1999;

5. The Income Tax (Amendment) Bill 1999;

6. The Road Traffic (Windscreen Transparency) Ordinance 1998 (Amendment) Bill 1999;

7. The Employment (Amendment) Bill 1999;

8. The Medical and Health (Amendment) Bill 1999;

9. The Animal Experiments (Scientific Procedures) Bill 1999.

THE EUROPEAN COMMUNITIES (AMENDMENT) BILL 1999

Clauses 1 and 2 and the Long Title

Question put. The House voted.

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

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

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

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

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

SCHEDULE 1A

HON CHIEF MINISTER:

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

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

HON J J BOSSANO:

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

HON CHIEF MINISTER:

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

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

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

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

Clauses 1 and 2 and the Long Title.

Question put. The House voted.

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

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

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

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

THE DEPOSIT GUARANTEE SCHEME (AMENDMENT) ORDINANCE 1999

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

THE INCOME TAX (AMENDMENT) ORDINANCE 1999

Clauses 1 and 2 and the Long Title.

Question put. The House voted.

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

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

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

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

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

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

THE EMPLOYMENT (AMENDMENT) ORDINANCE 1999

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

THE MEDICAL AND HEALTH (AMENDMENT) ORDINANCE 1999

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

THE ANIMAL EXPERIMENTS (SCIENTIFIC PROCEDURES) ORDINANCE 1999

Clauses 1 to 28, Schedules 1 to 3 and the Long Title were agreed to and stood part of the Bill.

THIRD READING

HON ATTORNEY-GENERAL:

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

Question put.

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

The European Communities (Amendment) Bill 1999.

The House voted.

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

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

The Bill was read a third time and passed.

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

The House voted.

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto

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

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

The Bills were read a third time and passed.

PRIVATE MEMBERS' BILL

FIRST AND SECOND READINGS

THE BBV BANK ORDINANCE 1999

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to make provision for and in connection with the transfer of the business of BBV Privanza (Gibraltar) Limited to BBV Privanza International (Gibraltar) Limited be read a first time.

Question put. Agreed to.

SECOND READING

HON P C MONTEGRIFFO:

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

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

HON J J BOSSANO:

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

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

HON P C MONTEGRIFFO:

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

HON J J BOSSANO:

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

HON P C MONTEGRIFFO:

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

Question put. Agreed to.

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

Question put. Agreed to.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

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

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

THIRD READING

HON ATTORNEY-GENERAL:

I have the honour to report that the BBV Bank Bill 1999, has been considered in Committee and agreed to without amendments. I now move that it be read a third time and passed.

Question put. Agreed to.

The Bill was read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

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

Question put. Agreed to.

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

FRIDAY 9TH APRIL 1999

The House resumed at 3.05 pm.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC – Chief Minister
The Hon P C Montegriffo – Minister for Trade and Industry
The Hon Dr B A Linares – Minister for Education, Training, Culture and Youth
The Hon Lt-Col E M Britto OBE, ED – Minister for Government Services and Sport
The Hon H A Corby – Minister for Social Affairs
The Hon J J Netto – Minister for Employment and Buildings and Works
The Hon K Azopardi – Minister for Environment and Health
The Hon A A Trinidad – Attorney-General (ag)
The Hon T J Bristow – Financial and Development Secretary

OPPOSITION:

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

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

IN ATTENDANCE:

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

OATH OF ALLEGIANCE:

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

MR SPEAKER:

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

DOCUMENTS LAID

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

Question put. Agreed to.

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

Ordered to lie.

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

Ordered to lie.

MOTIONS

HON CHIEF MINISTER:

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

Question put. Agreed to.

HON CHIEF MINISTER:

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

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

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

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

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

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

I commend the appointment to the House for confirmation.

Question proposed.

HON J J BOSSANO:

Mr Speaker, the Chief Minister is correct in assuming that we are going to be supporting the motion. I think it would certainly have been a bad start for the Ombudsman if the appointment had been made by one side of the House. We took the view, when we supported the Bill, that although we did not necessarily agree with the definition of how well drafted it is or how good the powers are or all the things that can be done, we thought it ought to be given the opportunity of being tested in practice and then we would see whether it meets the needs that the Government must believe exists otherwise it would not be creating this.

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

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

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

HON DR B LINARES:

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

HON J J NETTO:

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

HON CHIEF MINISTER:

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

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

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

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

Question put. The motion was carried unanimously.

HON P C MONTEGRIFFO:

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

Question put. Agreed to.

BILLS

FIRST AND SECOND READINGS

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE TOBACCO ORDINANCE 1997 (AMENDMENT) ORDINANCE 1999

HON CHIEF MINISTER:

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

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

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

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

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

Mr Speaker, the Bill also inserts new sections 17(a) to 17(d) into the Tobacco Ordinance, thereby giving Customs Officers powers of arrest, search and entry, with respect to offences contrary to this Ordinance as they currently have under Part II of the Imports and Exports Ordinance 1986. The powers referred to in the new sections 17(a) to 17(d) are as follows: It gives the Police and Customs Officers powers to arrest persons if in their opinion there are reasonable grounds of suspecting that offences have been committed against the tobacco Ordinance 1997, or if there has been an attempt to do so. It gives to Police and Customs Officers powers to require information from persons who they reasonably suspect of importing, exporting, transporting, or possessing cigarettes in circumstances contrary to the 1997 Ordinance. It gives to Police and Customs Officers powers to enter and search premises, vessels or aircraft, when they reasonably suspect cigarettes may be found in circumstances which would amount to a breach of the Ordinance and to search persons who a Police or Customs Officer reasonably suspects is in possession of cigarettes or importing or exporting cigarettes or intending to export cigarettes in circumstances contrary to the Ordinance.

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

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

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

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

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

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

I commend the Bill to the House.

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

HON J J BOSSANO:

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

of success that the representations had and that might have discouraged them from making them. Let me say that when the March 1998 amendment to the 1997 Ordinance was brought to this House we pointed out to the Government that where they were replacing tobacco by the word "cigarettes" in some parts of the Ordinance there appeared to be contradictions in that in other parts they were still leaving them there and the most we could get the Chief Minister to admit was that in his view it was inelegant to leave it there. It has been inelegant for a year but it has now been removed because it is now no longer inelegant – for an entirely different reason, I think. Clearly, when we put that view across we put the view because we thought it was preferable to have legislation passed by the House that did not appear to be inconsistent in different bits of it. The argument that has been put in that the wording of some of the sections that are being introduced is being lifted from other legislation, the Imports and Exports Ordinance and introduced here is, in fact, not a justification. The fact that in one particular law, in respect of one particular offence, one decides to conduct business in a certain way, does not mean that one can then lift that section, stick it in another law and say "well, because it is copied from the other one, if it was alright in the other one it is alright in this one". It does not follow. He ought to know that. It is quite obvious why in 1986 the Customs Officers had powers to enter into aeroplanes and ships and vehicles because what the law was concerned was with smuggling into Gibraltar and consequently it was to ensure that they were able to take action to prevent. The Ordinance says that they may enter on the grounds that they suspect that any ship, aircraft or vehicle is or may be carrying any goods which are chargeable with any duty which has not been paid or secured. That power is for the obvious reason that if the Customs Officer believes that somebody is in a vehicle or a boat in which he has got goods which he should have declared and he has not declared it and he has not paid the duty on it, the officer has got the right obviously to say "open your boot", that is what this law does. That is not the same thing as stopping somebody that has bought 2,000 cigarettes and saying "open your boot" and then the only way the person can escape arrest is by quickly opening one carton, then opening one packet, then smoking one cigarette and he is left with 1,999 in which case he is no longer breaking the law. We are not talking about the same scenario. If the Government are concerned about hoarding then it seems strange that the one place where the hoarding could be taking place, which is in premises, is the one place which is going to be amended to remove it because it is not suggested that people are hoarding these things in vehicles or hoarding them in aeroplanes or hoarding them in ships which are the other three categories. The Chief Minister said that the main problem is that there is hoarding. That is what he said in moving the general principles of the Bill. He said the Bill has been promoted because of representations by the Law Enforcement Officers who, presumably, believe that they need extra power and he identified that the problem was that there was hoarding in unknown places and that if that was allowed to continue then that quantity that is hoarded could somehow enter into the market. If it is hoarding then it is difficult to understand that if that is the main basis for the need for the legislation, to be able to tackle the problem of hoarding, then the hoarding is taking place in premises. The new powers which were previously in the Imports and Exports Ordinance in relation to dutiable goods did not, of course, deal with premises because they were not concerned with hoarding, what they were concerned with was importation. Consequently, if one has to search somebody's premises it is only because they have escaped the Customs at the entry points which is by sea, by air or by land. If one stops them by sea, by air or by land one does not need to worry about the ultimate destination and consequently this is why the primary focus is on the means of transportation of these goods. The powers are there to prevent the movement of goods that are chargeable to duty on which duty has not been paid but, of course, there is a provision in it which says that the Customs Officers under the existing Imports and Exports Ordinance also have the power in respect of goods the importation or exportation of which is prohibited or restricted by the Imports and Exports Ordinance, or any other Ordinance. If that is already there and the only difference between that and the new provision is the premises and the premises are going to be taken away, then why is it that the Government need to lift what is already in the Imports and Exports Ordinance and put it in this Ordinance? Unless, in fact, the whole purpose of the Ordinance is to give the power to Police Officers which is not in the original Ordinance. That is the only difference that I can see. When we are talking about the general principles of the Bill, I am trying to establish what is the purpose of the exercise. From what we have been told the only thing that has been identified is the hoarding and let me say that we both know that the volume of tobacco that goes in and goes out every month is very, very substantial and has been since the removal of the quota. It does not seem to me that it is a question of hoarding because if the stuff was being hoarded and was not leaving then it would not be replaced so if it is being hoarded it is being hoarded, as it were, in a place to accumulate it but it must be going out somehow. It is not just being held in stock. The argument that has been used for increasing the amount that a person may carry in a vehicle to 1,999 we have been told is to remove an anomaly in that as a pedestrian they could carry 1,999. Clearly, it is difficult to understand

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

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

HON CHIEF MINISTER:

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

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

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

HON J J BOSSANO:

Mr Speaker, the point on the constitutionality and why the fact that if it is in one law does not necessarily follow that it is constitutional in another one is because in the Constitution it says "except with his own consent no person shall be subjected to the search of his person or his property or the entry by others of his premises..." and then it goes on to say "nothing contained in or done under the authority of any law shall be inconsistent to the extent that the law in question makes provision" and it lists things. So in fact if one were to take a particular law which is not making provision for any of the things that are listed in the Constitution, the fact that the provision exists in one or the other, if the law says "if you are going into somebody's property because you are enforcing a law that deals with defence or with public safety or with public order or with public health" and one takes this Ordinance and says, "right, this has nothing to do with defence, it has nothing to do with public safety, it has nothing to do with public health" and one went down the list, one could then say "well, alright, although there are 20 other laws which are constitutional this particular one does not fit the criteria that the Constitution says because it has to be done under the authority of a law to the extent that the law in question makes provision for a list of things". Presumably, I would have expected that that would have been looked at by the Attorney-General to make sure that it does. The point I am making is that in his answer the Chief Minister seems to be saying that if it was already in some other law then it must follow that it is not unconstitutional and that it can be put in all laws. I do not think it follows from my reading of this.

HON CHIEF MINISTER:

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

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

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

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

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

Mr Speaker, the hon Member said that volumes in and out have increased very substantially since the removal of the quota system. The fact is that volumes are not up since the removal of the quota system. The fact is that the volumes of tobacco imports into Gibraltar are not at the levels that they used to be, for example, in 1994, 1995. The removal of the quota system has not resulted in more tobacco coming into Gibraltar. What it has resulted in, if one believes that the quota system was strictly enforced before, in theory it is now possible to get more... there were five Licences, five quotas of what was it 20 or 30 boxes each? Before I think the total daily quota was 150 boxes. Of course, in theory now there is no limit to the number of boxes but the hon Member knows, as well as I do, that the quota system did not prevent hoarding before. The hon Member must know that when tobacco smuggling in fast launches was prevalent, these boxes did not come from the warehouse of a Licensing Wholesaler straight to the shore for some balaclava youth to throw over the edge of the water. That these boxes were lifted from hoards that were then built up from the quotas that were allowed to reach the local market. That has always happened and what we are now doing is ensuring that that hoarding, which has always taken place, is now made increasingly more difficult and indeed that is the object of the main powers in the original 1997 Tobacco Ordinance.

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

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

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

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

HON J J BOSSANO:

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

HON CHIEF MINISTER:

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

Question put. The House voted.

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

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

Absent from the Chamber: The Hon J J Holliday

The Bill was read a second time.

HON CHIEF MINISTER;

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

ADJOURNMENT

HON CHIEF MINISTER:

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

Question put. Agreed to.

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

MONDAY 26TH APRIL 1999

The House resumed at 10.30 am.

PRESENT:

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

GOVERNMENT:

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

OPPOSITION:

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

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

IN ATTENDANCE:

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

DOCUMENTS LAID

DOCUMENTS LAID

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

Question put. Agreed to.

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

(1) The Revision of the Laws (Supplement No, 3) Order 1999.

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

Ordered to lie.

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

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE INSIDER DEALING (AMENDMENT) ORDINANCE 1999

HON CHIEF MINISTER:

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

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

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

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

HON A J ISOLA:

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

HON J J BOSSANO:

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

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

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

HON CHIEF MINISTER:

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

HON J J BOSSANO:

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

HON CHIEF MINISTER:

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

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

Question put. Agreed to.

The bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today if possible and I really put that subject to what I have already indicated to the hon Gentleman. Perhaps we can revisit this issue but I will put it on those terms and decide later whether I will proceed or not.

Question put. Agreed to.

THE EMPLOYMENT REGULATION (OFFENCES) ORDINANCE.

HON J J NETTO:

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

Question put. Agreed to.

SECOND READING

HON J J NETTO:

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

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

1. The Employment Ordinance;

2. The Income Tax Ordinance;

3. The Social Security (Insurance) Ordinance;

4. The Social Security (Employment Injuries Insurance) Ordinance;

5. The Medical (Group Practice Scheme) Ordinance; and

6. The Social Security (Open Long Term Benefits Scheme) Ordinance 1997.

Clause 3 of the Bill sets out the powers of Inspectors. Inspectors will have powers of search and entry. The substance of this clause follows similar provisions elsewhere in our legislation. In this context the attention of the House is drawn to, for example, section 43(2) of the Social Security Employment Injuries Insurance Ordinance. Clauses 4 and 5 represent the core of the legislation. Clause 4 makes reference to Schedule 1 which sets out, in respect of what offences inspectors will be able to serve fixed penalty notices under Clause 5(2). As the objective of the Bill is to tackle unregistered labour, the offences appearing in paragraph 3 of Schedule 1 therefore only concerns a duty to register, whether it be for employment, tax or social security purposes. The Bill establishes the fixed penalty notice fine at £1,500 for a single or a number of offences relating to the same employee. The Bill makes the employer, and not the employee, liable to the fixed penalty. Clause 5 makes provisions for fixed penalty notices. The general scheme of the clauses is, once again, standard in our legislation. Similar provision will be found, for example, in section 99 of the Traffic Ordinance and also in the Litter Control Ordinance. Under Clause 5 an inspector will have the powers to impose fixed penalties on any person found in breach of any provision quoted in paragraph 3 of Schedule 1. Persons served with such notices will have 14 days to settle the fine which, as I said before, is £1,500 if the fixed penalty notice is paid. An employer is not obliged to pay the fixed penalty notice. If he fails to do so either because he simply fails to do so or because he wishes to challenge the allegation in the Court, he can simply wait to be prosecuted for the underlying offences. The Fixed Penalty Notice itself is not a binding adjudication of the matter and does not create a legal obligation to pay. Upon conviction of the offences in court, the fine is fixed at £2,000 per offence. The court will also impose a fine of £2,000 per week that the offences continue after the issue of the Fixed Penalty Notice. To enhance the effectiveness of the legislation, clause 8(1) provides for fines to be recoverable summarily as a civil debt. In addition, Mr Speaker, the legislation seeks to clamp an existing loophole where people work in Gibraltar but are employed by companies abroad who are out of the reach of our law. The Bill seeks to deal with this by providing that where the employer has his principal place of business outside Gibraltar the employer shall be deemed to be the principal contractor on the site or the person that carries on business in the place where the illegal worker is working. Mr Speaker, the Government will make administrative arrangements and, if necessary, will introduce legislation to ensure that these new provisions do not apply in practice to casual employees who are already registered for employment, tax and social insurance purposes in respect of their principal employment in Gibraltar. This will avoid the need to register people who are properly registered in respect of their main job but who do extra casual work, perhaps for another employer, in their spare time. The obligation to pay tax on such earnings will, of course, remain as at present.

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

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

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

HON J L BALDACHINO:

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

HON CHIEF MINISTER:

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

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

Mr Speaker, the hon Member raises the question of the constitutional power to instruct a Judge. With the greatest of respect I think that the hon Member is confusing two very different points here. The law of the land is made by the legislature, which is us, which is a parliament. If the legislature wants to say in a law "the fine shall be fifty pence" then the fine is fifty pence and the function of the court is to enforce the law as it is passed by the legislature. If the legislature passes a law that says that if one is convicted of an offence one may be fined up to £500 or one may be sent to prison for up to three years, that legislation gives the judge a discretion. It is up to the judge to decide up to the maximum imposed by the legislature what sentence he gives. Of course it would be wrong for anybody to interfere with the exercise by a judge of a discretion given to a judge by an Act of Parliament. But that is very different from a situation where a piece of legislation does not give the judge a discretion and there are such bits of legislation.

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

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

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

HON J J BOSSANO:

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

HON CHIEF MINISTER:

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

HON J J BOSSANO:

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

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

HON CHIEF MINISTER:

Would the hon Member give way? Mr Speaker, obviously I was not in the House at the time and it is not for me to defend the views of Sir Joshua but the hon Member knows that we often legislate imposing fixed penalties. For example, we have passed legislation on numerous occasions imposing mandatory forfeiture. There are circumstances in which the Court is now required to order forfeiture of vehicles and boats and things of that sort and therefore far from being constitutionally challengeable the issue of the legislature passing laws which leaves the court no discretion at the time of sentencing, obviously not at the time of convicting, and say that one is not guilty, but if it finds one guilty the legislature says to the court "if you find somebody guilty you must fine him this" or "you must impose the following sentence", that, far from being unconstitutional, is perfectly well precedented in our existing legislation, not just on custodial sentences on the question of murder, for example, but in forfeiture. I accept this is the first time that that existing provision has been extended to the quantum of a monetary fine. The monetary fine is not qualitatively different from a fixed custodial sentence or a forfeiture, they are just three different types of sanction.

HON J J BOSSANO:

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

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

HON CHIEF MINISTER:

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

HON J J BOSSANO:

The Government may wish to do that but let me say that that explanation is not in fact reflected in the purpose of the Bill which is to take much more tough measures to prevent illegal labour because as I have said not telling the ETB that somebody has left ones employment who was previously recorded with them which meant that it was legal labour is not saying that the person is being punished by £1,500 fixed penalty or that he has to be fined £2,000 because he is employing illegal labour because, strictly speaking, he is not employing anybody and that the people that he is no longer employing were not illegal labour anyway otherwise there would be nothing to notify the Board about because the Board would not know the people were there. So what they are talking about is the termination of employment of legal labour is being treated as serious an offence and even hear the argument about mitigating circumstances even stronger, I would have thought. Let me say that the answers we have been given in this House in respect of that particular offence... the Government must be aware, indicates that there are in the region of 2,000 workers no longer working, registered with the ETB – the so-called "open contracts" and that therefore if in the next 30 days the employers fail to tell the ETB who these 2,000 are, under the law we are passing they become liable to either £3 million in fixed penalties or £4 million in fines or if they fail to cooperate with the inspectors, £10 million because then they become liable to level 5, which is another issue which is that it seems a new principle in legislation that somebody that is accused of not helping the inspector to catch him out is then liable not to £2,000 but to £5,000. The other point on constitutionality that we have had put to us in the past when we have looked at different... not just in this area but in other areas, has been that if in fact people have got the right to appeal not just against the conviction but against the severity of the sentence, then this law makes it impossible to appeal against the severity of the sentence, they cannot use the mitigating arguments in the first instance and they cannot use it to appeal against the sentence in the second instance. Apart from those political issues which are not directly relevant to employment issues, let me say that I think one of the problems with making the legislation too rigid in terms of possible discretion is that in some cases if the effect of it is that people are bankrupt as a result, then instead of creating more jobs one finishes up creating less and it is always a difficult situation. Many, many times any Government are faced with a situation that actually closing somebody down because they are not paying PAYE or whatever, does not solve the problem for anybody and employers have used that situation in the knowledge that they are protected because of concern for the welfare of employees from the Government taking action. But I think if one makes everything mandatory then even if there are occasions when one thinks it is perhaps not the wisest thing to do I do not think that one is leaving oneself any way out and that is in terms of possible effects in the level of employment. Let me say that the argument that has just been put when I gave way to the Chief Minister as to a policy decision in order to improve the quality of the statistics, I am of the view that provided this law is effective in requiring the people to be properly registered for PAYE then that will be the most reliable statistics the Government can have because one thing is for certain, nobody is going to be continuing PAYE payments after the employee has left so we do not need to punish them for doing that. If they do that I am sure the Government will not complain. The problem with the registration, and it has been a problem for some time, is that there is a tendency for people to be concerned

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

HON CHIEF MINISTER:

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

Question put. Agreed to.

The Bill was read a second time.

HON J J NETTO:

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

Question put. Agreed to.

THE PUBLIC HEALTH ORDINANCE (AMENDMENT) ORDINANCE 1999

HON K AZOPARDI:

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

Question put. Agreed to.

SECOND READING

HON K AZOPARDI:

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

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

HON A J ISOLA:

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

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

HON K AZOPARDI:

My understanding is that the applications are actually not being brought under the Town Planning (Control of Advertisements) Regulations but actually have been issued, the licences have been issued under the Public Health Ordinance for some time now since the days of Crown Lands. The reason being that Regulation 5(3) of the Control of Advertisements Regulations makes it clear that it applies only to advertisements which are at least a level of 2.44 metres from the level of the ground and so therefore it was considered that these do not apply to sandwich boards, historically. Given the fact that the Town Planning Ordinance is being amended, and the hon Member will know that I issued a consultative paper on that issue in November and we are now collating the last comments, we are now taking those into account to present the Bill to the House, the Department is in close consultation with the Legislation Unit. This issue cropped up, it was decided that as applications were not being brought under the Town Planning (Control of Advertisements) Regulations for the reasons that I have stated and that they were rightly being issued under the Public Health Ordinance, the Ordinance itself, the latter Ordinance, the Public Health Ordinance, was not specific enough that an amendment should be brought to make this clarification and this is the reason why this Bill is before the House. I hope this explanation clarifies the question the hon Member had.

HON A J ISOLA:

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

The House recessed at 11.55 am.

The House resumed at 12.05 pm.

HON K AZOPARDI:

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

HON A J ISOLA:

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

HON K AZOPARDI:

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

Question put. Agreed to.

The Bill was read a second time.

HON K AZOPARDI:

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

Question put. Agreed to.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

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

1. The Tobacco Ordinance 1997 (Amendment) Bill 1999;

2. The Employment Regulation (Offences) Bill;

3. The Public Health Ordinance (Amendment) Bill 1999.

THE TOBACCO ORDINANCE 1997 (AMENDMENT) BILL 1999

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

Clause 2

HON CHIEF MINISTER:

Mr Chairman, I have an amendment as I indicated on the second reading which I would like to move. In clause 2(1) it should read "The Tobacco Ordinance 1997" and not just "The Tobacco Ordinance" that is so that it is consistent with the references to the Tobacco Ordinance 1997 in the Short Title and in clause 1, in both places of which the date of the Ordinance is included, unusually for Gibraltar, but it is. Therefore, for consistency, the date should appear also in clause 2(1).

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

HON J J BOSSANO:

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

HON CHIEF MINISTER:

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

HON J J BOSSANO:

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

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

HON CHIEF MINISTER:

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

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

In Clause 2(5) there are substantive amendments to this extent. In the first place, in sub-clause 2(5) which amends section 6 of the principal Ordinance, the heading "Appeals" should be replaced... of course titles do not constitute part of the law but nor should they be misleading, that should read "Review of Decisions" as opposed to "Appeals" on the basis that a Judicial Review is not actually an appeal but a review of an administrative decision. Mr chairman, the reference to (1) after "(8)" should be deleted and the words inserted at the beginning of amended section (8) "subject to any relevant rule of law" so that section would read "subject to any relevant rule of law any person who is aggrieved by". The words "by a procedure known as an application" should be deleted on the basis that they are completely superfluous and add nothing to the meaning of the sentence, so that should now read "may apply to the Supreme Court for Judicial Review in accordance with rules of Court" as opposed to "may apply to the Supreme Court by a procedure known as an application for Judicial Review" and that is just verbiage which adds absolutely nothing to the fact that what one is giving people is a Judicial Review. Sub-clause (2) is to be deleted altogether. As those amendments may be difficult to follow I have taken the step of setting out the new text of the section as it will read as amended in the letter proposing the amendments. Starting just a third of the way down page 2, just for the benefit of Members' ease of following the amendments, Members will see how clause 8 will read if all these amendments that I am now proposing are carried. Members will see that there is no amendment to (a) (b) or (c) which are the substantive parts of the section 8 and what there is is tidying up language and correcting the title so that it should not be misleading. Mr Chairman, clause 2(7) shall be amended by deleting the full stop and adding the words "and are" substituting the word "cigarettes" for the word "tobacco" in the Title.

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

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

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

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

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

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

Mr Chairman, new clause 17(C) which is also introduced by clause 2(11) of the Bill, in page 53 of the Green Paper, should be amended as follows: again the text of section 17(C)(1) as it will read after amendment, is set out below the list thereof, of amendments, starting just halfway down the page, it says "section 17(C)(1) will now read as follows". The amendments, Mr Chairman, are firstly by deleting the words "without prejudice to any other power conferred by this Ordinance", those are the first words in the Green Paper in the clause. Secondly, by deleting "every part of any premises in Gibraltar or of", by deleting the words "or in those premises" and by deleting the word in sub-paragraph (a) "Premises". Mr Chairman, these are the points that we discussed during the second reading whether it was right that a Police and Customs Officer should have the power of entry into premises without a warrant. We know that they already have that power in respect of aircraft, boats and vehicles at points of entry. As drafted, the legislation would have given a power of entry without warrant into premises. We are going to leave it on this basis. I personally believe that there a distinction could be drawn between premises, that is, residential premises and commercial premises. I think the case for allowing Police and Customs Officers not to go into a residential premises without a warrant is much stronger than the case for not letting them go into a warehouse or a store without a warrant. Whilst I believe that they should require a warrant to enter a home without a warrant, I am much less clear as to whether that protection is really needed in respect of non-residential premises, but as the law will stand with the amendment that I am tabling for the House, they will need a warrant to enter into all premises without distinction and we shall simply keep an eye on how that works in practice and if we believe it is necessary to ensure the efficacy of the law we may come back to the House at a future date seeking the elimination of the need to apply for a Search Warrant in the case of non-residential premises.

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

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

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

HON J J BOSSANO:

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

HON CHIEF MINISTER:

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

HON J J BOSSANO:

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

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

HON CHIEF MINISTER:

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

HON J J BOSSANO:

Mr Chairman, the point is that we feel quite strongly that if in fact it had been established that it is possible, in our view it has not been the practice because incorrect advice was available saying it could not be done. But it would seem to me that since the Government are satisfied that it can be done, the fact that there are fixed penalties in other parts of that legislation I do not think is an argument because presumably the conviction for not providing information will be over and above the conviction for not registering labour and all the rest which will also be subject to other fines. I think it ought to be consistent with the seriousness with which the Government deal with this question of people not carrying more than 1,999 cigarettes per person in a vehicle, that if a Police Officer or a Customs Officers, suspects that a vehicle is carrying in excess of this quantity, then that should be somebody running away and refusing to cooperate with the Police, it ought to be considered serious enough to make the courts impose a fine at level 5, rather than leaving it at their discretion to impose it. I would have thought that it was less of an argument for mitigation in somebody running away with a vehicle full of cartons of cigarettes not being too help with an officer. Therefore, as far as we are concerned, I wish to propose an amendment that we should substitute for the words "is liable on summary conviction" to "shall on summary conviction be fined at level 5".

HON CHIEF MINISTER:

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

HON J J BOSSANO:

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

HON CHIEF MINISTER:

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

HON J J BOSSANO:

In order to do the second we would need to introduce a Private Member's Bill and in order to introduce a Private member's Bill we would need to get the support of the Government and it would not be very logical for the Government to support a Private Member's Bill unless they were willing to do it and if they were willing to do it, it would be more logical for them to do it. That is the answer to the second part. I am quite happy that the initiative should be taken by the Government provided that they give some thought to the usefulness of having it in this particular section, given that they consider it to be useful to have it in order to strengthen the deterrent in the law which makes the job of the Employment Inspectors presumably easier. The whole purpose is that if the employer knows that if he does not cooperate with the Inspector he will be fined £5,000, he is more likely to cooperate and presumably if somebody knows that if he does not stop the car he will be fined £5,000 he is more likely to stop the car. That is the logic. If the Government say they will take away the arguments we have put and come back and give us an answer yes or no, then we would rather that the matter should be given some thought and not press ahead with the amendment at this stage.

HON CHIEF MINISTER:

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

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

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

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

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

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

THE EMPLOYMENT REGULATION (OFFENCES) BILL

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

Clause 2

HON J J NETTO:

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

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

Clause 3

HON J J BOSSANO:

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

HON CHIEF MINISTER:

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

MR SPEAKER:

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

HON CHIEF MINISTER:

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

HON J J BOSSANO:

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

HON CHIEF MINISTER:

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

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

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

Clause 6

HON CHIEF MINISTER:

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

HON A J ISOLA:

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

HON CHIEF MINISTER:

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

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

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

Schedule 1

HON J J NETTO:

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

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

Schedule 2

HON CHIEF MINISTER:

In section 3, headed "Amendments to Employment legislation" it is sub-section (2) of 26 that has the effect of imposing a fine at level 4 for all the employment-related offences listed in the Schedule. What we have agreed is that we want to make an exception of the offence that relates to notification of termination. The way that I am advised that this needs to be done is that in (2) the words at the beginning have to be insert to read "Subject to sub-regulation (3) and" so in (2) it would start "Subject to sub-regulation (3) and" and then it carries on as it is and then we add a new sub-regulation (3) so we add "(3)" after (2) so this would be "26(3)" and it would read "A person found guilty of an offence contrary to Regulation 13 of the Employment Regulations 1994 shall be sentenced on summary conviction to a fine at level 3 on the standard scale".

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

The Long Title

HON J J NETTO:

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

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

THE PUBLIC HEALTH ORDINANCE (AMENDMENT) BILL 1999

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

THIRD READING

HON ATTORNEY-GENERAL:

I have the honour to report that The Tobacco Ordinance 1997 (Amendment) Bill 1999, The Employment Regulation (Offences) Bill 1999, and The Public Health Ordinance (Amendment) Bill 1999, have been considered in Committee and agreed to with amendments and I now move that they be read a third time and passed.

Question put. Agreed to.

The Bills were read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

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

Question put. Agreed to.

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