# GIBRALTAR

## HOUSE OF ASSEMBLY

# HANSARD

**1ST SEPTEMBER, 2000**

**(adj to 4th, 12th, September,
9th, 23rd October,
20th November, 2000)**

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Third Meeting of the First Session of the Ninth House of Assembly held in the House of Assembly Chamber on Friday 1st September 2000, at 10.00 am.

PRESENT:

Mr Speaker ..... (In the Chair)
(The hon Judge J E Alcantara CBE)

GOVERNMENT:

The Hon P R Caruana QC – Chief Minister
The Hon K Azopardi – Minister for Trade, Industry and Telecommunications
The Hon Dr B A Linares – Minister for Education, Training, Culture and Health
The Hon J J Holliday – Minister for Tourism and Transport
The Hon Lt-Col E M Britto OBE, ED – Minister for Public Services, the Environment, Sport and Youth
The Hon H A Corby – Minister for Employment and Consumer Affairs
The Hon Mrs Y Del Agua - Minister for Social Affairs
The Hon R Rhoda QC – Attorney-General
The Hon E G Montado OBE – Financial and Development Secretary (Ag)

OPPOSITION:

The Hon J J Bossano – Leader of the Opposition
The Hon J L Baldachino
The Hon Miss M I Montegriffo
The Hon Dr R G Valarino
The Hon J C Perez
The Hon S E Linares

ABSENT:

The Hon J J Netto – Minister for Housing
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 E G Montado OBE took the Oath of Allegiance.

CONFIRMATION OF MINUTES

The Minutes of the Meeting held on the 8th March 2000, having been circulated to all hon Members, were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

The Hon the Financial and Development Secretary laid on the Table Statements of Consolidated Fund Reallocations approved by the Financial and Development Secretary (Nos. 11 to 13 of 1999/2000).

Ordered to lie.

ANSWERS TO QUESTIONS

The House recessed at 1.10 pm.

The House resumed at 3.05 pm.

Answers to Questions continued.

The House recessed at 5.00 pm.

The House resumed at 5.10 pm.

Answers to Questions continued.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Monday 4th September 2000, at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 7.10 pm on Friday 1st September 2000.

## MONDAY 4TH SEPTEMBER, 2000

The House resumed at 10.05 am.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC – Chief Minister
The Hon Dr B A Linares – Minister for Education, Training, Culture and Health
The Hon J J Holliday – Minister for Tourism and Transport
The Hon Lt-Col E M Britto OBE, ED – Minister for Public Services, the Environment, Sport and Youth
The Hon H A Corby – Minister for Employment and Consumer Affairs
The Hon Mrs Y Del Agua - Minister for Social Affairs
The Hon R Rhoda QC – Attorney-General
The Hon T J Bristow – Financial and Development Secretary

OPPOSITION:

The Hon J J Bossano – Leader of the Opposition
The Hon J L Baldachino
The Hon Miss M I Montegriffo
The Hon Dr R G Valarino
The Hon J C Perez
The Hon S E Linares

ABSENT:

The Hon K Azopardi – Minister for Trade, Industry and Telecommunications
The Hon J J Netto – Minister for Housing
The Hon Dr J J Garcia

IN ATTENDANCE:

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

ANSWERS TO QUESTIONS continued.

The House recessed at 1.05 pm.

The House resumed at 3.05 pm.

Answers to Questions continued.

The House recessed at 5.00 pm.

The House resumed at 5.25 pm.

Answers to Questions continued.

The House recessed at 7.55 pm.

The House resumed at 8.05 pm.

Answers to Questions continued.

BILLS

FIRST AND SECOND READINGS

**THE MERCHANT SHIPPING (CARRIAGE OF DANGEROUS OR POLLUTING GOODS) ORDINANCE 2000**

HON CHIEF MINISTER:

On behalf of the Minister for Tourism and Transport I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar Council Directive 93/75/EEC as amended by Commission Directives 96/39/EEC and 97/34/EC and Council Directive 98/55 concerning minimum requirements for vessels bound for or leaving community ports and carrying dangerous or polluting goods, be read a first time.

Question put. Agreed to.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Tuesday 12th September 2000, at 3.00 pm.

Question put. Agreed to.

The adjournment of the House was taken at 10.30 pm on Monday 4th September 2000.

## TUESDAY 12TH SEPTEMBER, 2000

The House resumed at 3.05 pm.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC – Chief Minister
The Hon K Azopardi – Minister for Trade, Industry and Telecommunications
The Hon Dr B A Linares – Minister for Education, Training, Culture and Health
The Hon J J Holliday – Minister for Tourism and Transport
The Hon Lt-Col E M Britto OBE, ED – Minister for Public Services, the Environment, Sport and Youth
The Hon J J Netto – Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social Affairs
The Hon R Rhoda QC – Attorney-General
The Hon T J Bristow – Financial and Development Secretary

OPPOSITION:

The Hon J J Bossano – Leader of the Opposition
The Hon Dr J J Garcia
The Hon J L Baldachino
The Hon Miss M I Montegriffo
The Hon Dr R G Valarino
The Hon J C Perez
The Hon S E Linares

ABSENT:

The Hon H A Corby – Minister for Employment and Consumer Affairs

IN ATTENDANCE:

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

## BILLS

## FIRST AND SECOND READINGS

**THE MERCHANT SHIPPING (CARRIAGE OF DANGEROUS OR POLLUTING GOODS) ORDINANCE 2000**

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 Ordinance is to transpose into the law of Gibraltar certain EU directives which set out the minimum requirements for vessels bound for or leaving Community ports and which are carrying dangerous or polluting goods. The directives in question are directives 93/75/EEC as amended by directive 96/39/EEC, 97/34/EEC and 98/55. The way in which this Bill will work is that the Captain of the Port, who is defined as the Competent Authority for Gibraltar, will need to be made aware by the master or the owner, charterer, manager or agent for the ship, that the vessel is carrying dangerous or polluting goods. Clause 2 of the Bill contains the relevant definition. Clause 3 clarifies that bunkers, stores and equipment for use on board a vessel should not be regarded as dangerous or polluting goods for the purpose of this Ordinance. Clause 4 defines the Captain of the Port as the Competent Authority and his duties in respect of this Ordinance are set out in Clause 9. Clause 5 contains key provisions, that only vessels which comply with this Ordinance shall be allowed to enter or leave the Port of Gibraltar. Clause 6 sets out how dangerous or polluting goods shall be taken on board a ship at Gibraltar. Clause 7 sets out the duty of an operator both with regard to a vessel containing dangerous or polluting goods which is leaving the Port having taken these on board at Gibraltar and also with regard to a vessel heading for Gibraltar from a port which is not located in the European Union. Clause 8 ensures that the ship owners comply with the terms of this Ordinance and Clause 10 sets out the duties of a master of a vessel under this Ordinance. Particularly it provides that the ship carrying dangerous or polluting goods must make use of palliative service at Gibraltar.

Finally, Clauses 11 and 12 set out the duties of a master of a vessel in an emergency and the duties of pilots should they become aware of any defects in the vessel carrying dangerous or polluting goods. The Schedule to the Bill contains in Part I forms setting out the information which needs to be made available to the Captain of the Port in respect of vessels carrying dangerous or polluting goods in accordance with Sections 7(b), 7(c) and 11(1) of the Bill. Part II sets out the checklist for vessels as required by Clause 10(c) of the Bill.

Mr Speaker, the transposition of this European Union directive is in line with Government policy to ensure that Gibraltar has in place a strict and correct routine to tackle all matters relating to

pollution at sea and the carriage of dangerous goods. This Ordinance will complement considerable work that has already been done in practical terms in the field of pollution prevention. The Bill which I am presenting to the House today needs to be seen as part of this process as being prepared for any eventuality. In particular the Bill sets out to prevent accidents by ensuring that the reporting regime is in place and that everybody knows precisely what their duties and responsibilities are, the master of the vessel, the operator, the shipper, the agent, the Gibraltar Pilots and the Captain of the Port.

I commend the Bill to the House.

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

HON J C PEREZ:

Mr Speaker, whilst the general thrust of the provisions contained in the Bill are welcome by Opposition Members, there is of course the matter of the Competent Authority and whether the Competent Authority is decided by this House of Assembly or whether the Competent Authority is decided by the Member State the UK who under Article 3 of the directive, has to inform the Commission so that his name or the position of the person concerned is included in the list of Competent Authorities in the EU. I would certainly think that if we are the ones deciding who the Competent Authority is we would be the ones notifying it but it would seem, under the provisions of the EEC directive in question, ultimately it is the United Kingdom Government that decide who the Competent Authority is for Gibraltar given that they have to approve it and they then have to notify the Commission who the Competent Authority is. I would like clarification.

HON CHIEF MINISTER:

Mr Speaker, as the hon Member is aware, the issue that he puts his finger on is not a new one. Since we have been in the European Community the directives of the European Community simply say that the Member State will designate a Competent Authority. Therefore, this directive is the same as all directives have been. We in Gibraltar have always proceeded on the basis and continue to proceed on the basis that where a directive requires the appointment of a Competent Authority to implement that directive in respect of Gibraltar, that the Competent Authority in and for Gibraltar must be the appropriate constitutional authority in and for Gibraltar and cannot be whoever happens to be the Authority in the UK, for the UK. That is the position, remains the position and without wishing to revisit the debate I had with the Leader of the Opposition at the end of Question Time last week, that is what the Government consider is saved in the Competent Authority Agreements entered into in April and that is acceptance and recognition that when a directive requires a Competent Authority the United Kingdom shall be free, without Spain objecting, to designate a Gibraltar Authority as being the Competent Authority for Gibraltar separately to whoever the UK designates for itself. That does not completely dispose of the hon Member's point because he then spoke of who communicates that to the European Community. We have got to accept the fact Mr Speaker that when a directive says that Member States shall communicate who are their Competent Authorities to the Commission so that the Commission can take note of it, that Gibraltar is not a Member State. We are a part of the Community with our own Competent Authority but our Member State is the United Kingdom and it is the United Kingdom that communicates to the Commission who is the Competent Authority for Gibraltar in any given measure. I am drawing a very careful distinction between who is the Competent Authority, namely Gibraltar, who designates the Competent Authority for the purposes of Gibraltar law, the hon Member knows it is us because he and I are now doing it today. We are designating that the Captain of the Port is the Competent Authority for this but the United Kingdom will communicate that information. I have not spotted in this Bill, I take it at the hon Member's word, that this needs to be communicated to the Commission. I am sure it is there if the hon Member has alluded to it in his own contribution. The United Kingdom will communicate that fact and following on the Competent Authority Agreement of April, Spain and the other

Member States recognise the competence of the Gibraltar Competent Authority in respect of externally-relevant acts provided that the Gibraltar Competent Authority channels that communication through the post box. That is the essence of the Agreement and I hope that is the answer to the hon Member's points contained in that explanation.

HON J J BOSSANO:

Mr Speaker, I think as my Colleague has pointed out, this was the only point in the general principles of the Bill that we thought placed a general principle. It may appear in others and it is certainly not specific to this. In this particular article it says "....the Commission shall publish the list of Competent Authorities and their communication links designated by Member States". It is clear that in the context of the European Union the difference between the position prior and post the Agreement which the Government are very happy and we are very unhappy, we just beg to differ, it is a matter for the Member State to decide in its own sovereign right, as it were, what the communication link should be. In our view if the United Kingdom had in its wisdom decided that the communication links for the Competent Authorities that it designates which obviously the provisions in this particular case as there are some other instances where there have been provisions, are that the Member State may well have more than one Competent Authority even though it may not have an Overseas Dependent Territory which forms part of the European Union. Spain might decide, for example, that they would want the Competent Authority in this instance in the Canary Islands different from mainland Spain and then they would be free to decide whether the communication links should be that people should notify directly the Canary Islands or should have to go via Madrid. My point is that the Commission and indeed the rest of the Member States have got no right to tell each Member State how it runs its own internal business. I think this is reflected in more than one directive and here if the wording is such that it makes clear that it is the Member State who decides who and how many Competent Authorities there should be to carry out the responsibilities that are the Member State's responsibility and the Commission then is simply required to publish the Competent Authority's list and the communication links designated by the Member States themselves so that others know what to do. We in fact picked up this point in relation to the issues regarding the sanctions and I think we are drawing attention to the same point. Of course, we will be on the lookout to see precisely how that communication happens.

HON CHIEF MINISTER:

Mr Speaker, that is exactly what will happen in this case. This is a directive which we are transposing into Gibraltar law. It requires the designation of a Competent Authority. We are designating our Competent Authority but, of course, the hon Member raises the issue that lies at the root of the Competent Authority problem, or that lay at the root of the Competent Authority problem, and which is raised by the difference between the Canary Islands and Gibraltar and that is that any Competent Authority designated in the Canary Islands by Spain is a metropolitan Member State Competent Authority because the Canary Islands is an integral part of the Spanish Member State, whereas Gibraltar is not an integral part of the Spanish Member State and therefore an Authority designated in Gibraltar is not an Authority of a Member State. It is a Competent Authority in a territory of Europe to which the treaties apply, which is an integral part of the European Community, without being part of a Member State. That is the distinction that has thrown up all the differences that the Spaniards have seized on to create the problem that the hon Member knows that they have created for some time. Between them I think they have made the point, Mr Speaker, that the United Kingdom decides. I should say to the hon Member that part of the April Agreements the parts of it that are bilateral between the UK and Gibraltar to which Spain is not a party, involves the United Kingdom agreeing that Competent Authorities for Gibraltar would be the appropriate local constitutional Authority and that therefore we are not at the UK's whim as to whether in one case who they want to appoint in any given case. I am happy to give way to the hon Member.

HON J J BOSSANO:

Can I just say something which I am sure the Chief Minister will want me for the record to say and I have no doubt that it was a slip of the tongue when he said "we are not a part of the Member State Spain". What the Chief Minister really meant is "we are not a part of the Member State United Kingdom".

HON CHIEF MINISTER:

I am grateful to the hon Member for that correction, Mr Speaker.

HON J J BOSSANO:

Mr Speaker, the point is, of course, that the Agreement constraints the freedom of choice of the United Kingdom. Technically, before this happened the United Kingdom would be free as other Member States are to decide whether in a particular instance, of a particular directive, communication should be direct. The April Agreement seems to me to prevent that option which does exist for other people.

HON CHIEF MINISTER:

It does not prevent it but it becomes optional for the other Member States. Those Member States that are happy to deal with Gibraltar's Competent Authorities directly are of course free to do so but any country who insists on their Competent Authority channelling its formal written communications through the post box is free to decide that that is what it wants to do without us being able to complain.

HON J J BOSSANO:

Thank you, Mr Speaker. We will be supporting the Bill obviously.

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 later today.

Question put. Agreed to.

**THE LICENSING AND FEES ORDINANCE (AMENDMENT) ORDINANCE 2000**

HON J J HOLLIDAY:

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

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this is a very short Bill which sets out to repeal the provisions of the Licensing and Fees Ordinance (Amendment) Ordinance 1998. This Ordinance was published in the Gibraltar Gazette on the 13th August 1998 and makes provisions for passenger tax to be levied in a manner which is different from the system that had applied until that point. In so far as passenger tax for air passengers was concerned the Ordinance introduced a year round tax of £3 for passengers departing for Morocco and £7 for passengers departing for other destinations. Previously there had been different levels of summer and winter rates. It was necessary to introduce the new rate of passenger tax

retrospectively from 1st April 1998 which is why the avenue of primary legislation had to be followed.

The 1998 Ordinance also introduced reductions in passenger tax to cruise passengers. The reductions were in the form of sliding scales which gave increasing discounts to a cruise ship the more times it called at Gibraltar. In fact the introduction of reductions in passenger tax was well greeted by the cruise industry and was one of a series of factors which has helped the growth in importance of the cruise industry for Gibraltar. Mr Speaker, the proper manner to provide for the setting of passenger tax is through secondary legislation. In tandem with the enactment of the proposed Ordinance, Regulations will be published in the Gazette which will supplement the regime already established by the Licensing and Fees Ordinance (Amendment) Ordinance 1998 in the case of cruise ships. The reduction in passenger tax will be extended. What will now apply is that all ships owned by the same cruise company will be able to activate their cruise calling at Gibraltar for the benefit of obtaining the reduction in passenger tax instead of having calls by each ship treated individually. I commend the Bill to the House.

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

HON J C PEREZ:

Mr Speaker, I wish the Minister had informed the people drafting the Bill of the intention of the Bill because the Explanatory Memorandum in the Bill which is published says something completely different to what the Minister's objective is today. The Explanatory Memorandum says that the Licensing and Fees Ordinance (Amendment) Ordinance 1998 makes provisions for reductions in port fees payable by cruise ships. I myself checked that amendment in 1998 and I concur with the Minister that it does not do that, it is about passenger tax. We have been looking at this piece of Ordinance on the basis of the Explanatory Memorandum put by the Government which says that the Bill aims to do something completely different. I suggest that if it is the passenger tax as the Minister has explained now, that we might be able to leave the Bill unsigned so that we can look at it in the context of how it is being presented today and not of how it has been published, given that how it has been published is completely different.

HON J J BOSSANO:

Can I just say that the point is that we assumed that the mistake was not in the Explanatory Memorandum but in the body and that in fact whatever it was the Minister was repealing he was not repealing the passenger legislation but something else which we have searched for and not been able to find.

HON CHIEF MINISTER:

With the greatest of respect to the hon Gentleman, I do not understand it. This Bill simply repeals an Ordinance. As to the effect of this legislation all the hon Member has to do is look at what the Ordinance that is being repealed does.

HON J C PEREZ:

Fine, and we looked at the Ordinance and we looked at what the Ordinance had provided for in 1998 and we looked at the Explanatory Memorandum and said "well, obviously this cannot be the objective of the Government because they are talking in the Explanatory Memorandum about reduction in port fees and the Ordinance of 1998 talks about departure tax". So we said "they must have made a mistake in....." but really what we thought the Government wanted to do was to change the port fees payable by ships and not the departure tax, given the Explanatory Memorandum of the published Bill.

HON CHIEF MINISTER:

Be that as it may, cannot the hon Members just accept that the objects of the Bill are actually very simple. It repeals the existing tariff fixed by ship as the Minister has explained and gives the

discount to ships operated by the same operator to encourage fleet visits. That is all that the legislation does. I wonder whether the hon Members want the Minister to repeat the explanation when he sums up. The point is that there is not a great issue of policy here. The issue here is that the Government want to be able to have a sliding scale of deductions for companies that gives them a bigger benefit for more of their ships that visit Gibraltar as opposed to it being fixed per ship.

HON J J BOSSANO:

Can I ask, in terms of the amendment that is being done, the Licensing and Fees (Amendment) Ordinance is repealed but then the Schedule says it shall have effect as if the Licensing and Fees Ordinance amendment had never been enacted. I do not quite understand the effect of that. On the surface it seems to me that if what we did in August 1998 as we have now had confirmed which is what we thought was happening but did not seem to concur with what the objective of the Bill was, was to reduce the fees and we are now repealing the act that reduced the fees and restoring the position before the reduction and then going on to say "it is as if the act had never happened", what happens with all the fees that have been paid at the reduced rate?

HON CHIEF MINISTER:

The point is that the 1998 Ordinance that we are repealing, in the body of the Ordinance sets out in Section 2 the actual tariffs. I shall pass the hon Member a copy of it now for his information, as opposed to the previous Ordinance which remains in place which had a Schedule which was amendable by subsidiary legislation, by notice in the Gazette. The effect of repealing the 1998 Ordinance is that we are eliminating the Ordinance that contains the tariff structure in the body of the Bill itself. Then it goes on to say that the Licensing and Fees Ordinance, because there was one before the 1998 which was not repealed by it, what the 1998 one did was repeal Schedule 2 of the original principal Ordinance. That Schedule was amendable by Order in the Gazette. The effect of now repealing the 1998 Ordinance, and this Bill providing that the Licensing and Fees Ordinance and Schedules thereto shall have effect as if the Licensing and Fees (Amendment) Ordinance had never been enacted means that the repeal of the Schedule is eliminated and we go back to a statutory framework which has a principal Ordinance, namely the Licensing and Fees Ordinance, with a Schedule with the fees set out in the Schedule which can be changed by secondary legislation as opposed to the 1998 Ordinance which had the fees set out in the main body of the legislation. The hon Member says, "is not the effect of Clause 2(ii) to restore the rates so that you are eliminating the legality of what you have done since 1998?" The answer we believe is not, Mr Speaker, because as it had never been enacted as of the date that this Bill is passed in the House. We are not doing anything retrospective. What we are saying is now the result of this Bill now before the House is that the Schedule is restored as of today. I agree that the language could be less ambiguous but the effect is that the Schedule is restored as of today to the Licensing and Fees Ordinance, the principal Ordinance. We can call it that to distinguish it from the 1998 Ordinance. Now, I agree that this might easily have read "the Licensing and Fees Ordinance and the Schedules thereto shall have effect as from the date hereof, the Schedules were restored to it". It could read in that way and I am just wondering whether before the Committee Stage just give that matter some thought. If there is any ambiguity such as the hon Member is pointing out then I think it is worth changing so that we do not find ourselves having retrospectively deprived ourselves of the legal basis for the tariff that we have been charging.

HON J J BOSSANO:

....and presumably in that situation having to deter ships from coming here because they would now have to pay arrears having been told they would have to pay less at the time.

HON J J HOLLIDAY:

Mr Speaker, all I would like to add to what has been discussed is that the reasoning behind this Bill, as I have said in my speech earlier on, is to move with the developments that currently are

moving in the market in order to ensure that companies are attracted to Gibraltar where they are enjoying the sliding scales by actual corporate branding rather than by individual vessels. We believe that in August 1998, as a result of the Licensing and Fees amendment in 1998 we did address and attracted a number of vessels to call at Gibraltar but now the development in the market is one where we are having to try and attract these by companies as there have been a number of take-overs, amalgamations, within companies which means that they are currently operating under different brands which makes it essential for us to be able to offer these by corporate identities rather than vessels themselves.

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 later today.

Question put. Agreed to.

**THE PUBLIC HEALTH (AMENDMENT) ORDINANCE 2000**

HON LT COL E M BRITTO:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar Council Directive 96/82/EC on the control of major accident hazards involving dangerous substances be read a first time.

Question put. Agreed to.

SECOND READING

HON LT COL E M BRITTO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the risks for man and the environment arising from any industrial activity are of two kinds - through team risks in normal operating conditions and exceptional risks such as fires, explosions and massive emissions of dangerous substances when an activity gets out of control. This Bill is concerned with the second kind of risk and requires steps to be taken to prevent major accidents and to limit the consequences of any that may occur. These steps include preparing safety reports and emergency plans for establishments containing specified dangerous substances and informing the public of the correct behaviour to adopt in the event of an accident. The Bill transposes EC Directive 96/82 and repeals and replaces the Major Accident Hazards of Certain Industrial Activities Regulations 1994. The Ordinance applies to establishments where minimum quantities of dangerous substances as specified in Schedule 6 are present. The quantities of dangerous substances are listed in two columns, thereby defining two categories of establishments - a lower and upper tier, with the latter category being subject to more stringent measures. The Ordinance imposes a duty on the operator of any such establishment to take all measures necessary to prevent major accidents and limit their consequences to persons and the environment. Various activities, such as military establishments, hazards created by ionising radiation, extracted industries and waste land filled sites are excluded from the provisions of the directive and this is reflected in the transposing legislation. The operator of every affected establishment has a duty to prepare a document setting out his policy for preventing major accidents, a major accident prevention policy. Schedule 7 gives details of the principles to be taken into account when preparing such a policy but the key areas are organisation of personnel, identification and evaluation of major hazards, operational control, planning for emergencies, training and monitoring audit and reviews.

Operators of all establishments subject to the Ordinance must notify certain specified matters to the Competent Authority which in the case of Gibraltar is the Environmental Agency. Details of the information is given in Schedule 8 and includes the name and address of operator, address of establishment, name or position of person in charge, details of dangerous substances on site, site activities and environmental details. Upper tier operators also have to prepare a safety report but need not prepare a separate major accident prevention policy if the information required for the policy is included in the safety report. The purpose and contents of safety reports are set out in Schedule 9 and include a policy on how to prevent and mitigate major accidents, a management system for implementing that policy and effective method for identifying any major accidents that occur, measures such as safe plant and safe operating procedures to prevent and mitigate major accidents, information on safety precautions built into the plant and equipment when it was designed and constructed, a description of the installation and its environment, identification and accidental risk analysis and prevention methods and measures of protection and intervention to limit the consequences of an accident. Additionally, upper tier operators must prepare an emergency plan known as the "On Site Emergency Plan" to deal with the on site consequences of a major accident. The Competent Authority may also prepare an emergency plan known as the "Off Site Emergency Plan" in respect of any such establishment. The objective of both these emergency plans are to contain incidents so as to minimise the effects, protect and limit damage to persons and the environment, communicate the necessary information to the public, the emergency services and authorities and provide for the restoration of the environment following major accidents. The Ordinance contains provisions as to the dates by which safety reports and emergency plans have to be prepared and for the regular review and tested. People who could be affected by an accident at one of these establishments must be given information without their having to request it on the dangerous substances, possible major accidents and what to do in the event of such an accident. The Competent Authority for the enforcement of this Ordinance is the Environmental Agency who are charged with duties of inspection and investigation of establishments, examining safety reports, prohibiting the operation of an establishment where preventative and mitigation measures are seriously deficient and the provision of the information.

Finally, Mr Speaker, the Ordinance amends the Town Planning Ordinance to ensure that planning controls include the need to prevent major accidents and revokes the Control of Major Accident Hazards of Certain Industrial Activities Regulations 1994. It is not known how many establishments will fall within the scope of this Ordinance and initially a survey and publicity campaign will be carried out to determine how many establishments are affected and to bring to their attention the contents and responsibilities imposed by the new legislation. I commend the Bill to the House.

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

HON DR R G VALARINO:

Mr Speaker, I realise that this is part of on-going EU legislation that imposes requirements in respect to the control of major accidents hazards involving dangerous substances and imposes a duty as well on the operator of an establishment to take certain measures in order to prevent such accidents. There is a list on page 82 of the Bill of named substances. Some of these are carcinogenic in nature. Some of them I do not think apply to Gibraltar. The most obvious of them all is the last one, the automotive petrol and other petroleum spirits and I wonder whether the Minister will give us an idea as to what type of undertakings this legislation may affect by passing it. In doing so the Minister mentioned that he was going to do a kind of survey. Has the Minister got any idea of the length of time that this survey will entail? I think that is as much as I need to say on this one.

HON J C PEREZ:

Could the Minister state whether the Government have identified whether any such operators as specified in the legislation exist in Gibraltar today? And, if so, what is the immediate impact to those operators of the legislation?

HON J J BOSSANO:

Mr Speaker, the Minister said that in fact this revokes and replaces the Regulations of 1994 which were to do with the aftermath of the Seveso incident in Italy. In fact, at the time it was very clear that the whole thing was academic as far as Gibraltar was concerned. It was related primarily with chemical plants and I do not think since 1994 there has been any record of anybody having been registered or identified as being involved in any of the activities that were covered by that Regulation to my knowledge. Is it that the new directive extends the scope to activities which might exist in Gibraltar whereas it was obvious that the original ones that it did not apply to anything in Gibraltar? It is quite obvious that a lot of these things have been copied from EEC directives to our legislation notwithstanding the fact that it is manifestly impossible for us to find ourselves in some of the situations described here. For example, there is a reference here to the activities that may happen within certain distances of fresh water lakes which is clearly not something that is going to happen however long and however many surveys we engage in. The other point that I wish to draw attention to is the fact that Sections 95(a) to 95(t) do not apply to military establishments and given that part of the law based on the directive deals with explosives, I would have thought if we are going to have legislation that requires certain safeguards to be introduced in relation to people who have got explosives on their premises and the most likely culprit is not going to be covered then it seems to me that we are..... there is a note saying "explosive means a substance a preparation which creates the risk of an explosion" and if explosives is one of the things included, is it that the directive specifically says that military installations are not to be included? Or is it something that the UK has asked? One other point that I would like to raise in the context of what has been said about needing to do a survey, one of the things that we felt we should be entitled to do in Gibraltar which is something the UK does for itself, is in fact to carry out an exercise called "Compliance Cost Assessment" so that when we are taking on the responsibility we are able to gauge what is going to be the burden of compliance. This the UK does in respect of all the directives before it decides to the degree to which it is going to implement. In the case of Gibraltar it seems we are required to implement and find out what the cost is after we have implemented it. I would suggest to the Government that they should pursue the argument that we are as entitled as any other territory in the European Union is and does to look at the cost of these things before we take them on and particularly if we have got, as we have, a contract with the Environmental Agency. Presumably if we place new obligations on them that may mean extra payments having to be made.

HON CHIEF MINISTER:

If I could just deal with that last issue. Mr Speaker, of course, the cost of compliance is not relevant to whether one is bound by it and the UK tends to do that consultation process, the Compliance Cost Assessment, at the stage where the directive is a proposal for a directive. So that consultation process of the cost of implementation is not part of the legislative process when the Bill comes before the House of Commons, it is when the European Community publishes the proposal for the directive and the UK is doing the internal national consultation process about what this will mean to the UK if the Community adopts the directive and it becomes an actual directive. Of course, at that stage the United Kingdom as a Member State is free, unless of course it is a qualified majority voting issue, it is an issue that requires unanimity, the United Kingdom is then free to say "well, this is too expensive for us, I veto it". We will unfortunately never be in that position because as hon Members know the United Kingdom has never allowed us the option of deciding whether.....we never have the opt in or opt out right in respect of directives. I suppose we could go through the procedure that the hon Member describes at the time that we discover that proposal for the

directive exists. I very much doubt, however, that the United Kingdom would be willing to deploy its national veto on the basis that we found it too costly to implement in Gibraltar.

HON LT COL E M BRITTO:

Mr Speaker, before dealing with the individual points raised by the Opposition Members I think I would stress that one must not lose sight that being a directive or not being a directive, one must not lose sight of the objective of this legislation which is to ensure that there is in place in establishments, be they factories or be they small shops, adequate planning to forestall and to prevent an accident and the consequences to people in the area. As such, I think we should welcome the Bill. But to go on to the specific points made, the first is that the Hon Dr Valarino was asking what kind of establishments are likely to be affected, the short answer is that that is one we do not know for certain because we need to know two things. We need to know whether they hold the list of nominated substances, details are on page 82, which the hon Member refers to, and if he wants any particular explanation about any particular chemical I would be happy to give him a limited explanation but secondly not just if they are present but whether they are present in sufficient quantity to cross the threshold firstly of the lower tier or secondly on the higher tier. I have had identified for me because I anticipated that question, places like hardware stores, which could be affected, holders of chemical products like Oxy Ltd or Lyonnaise, ship repair facilities like Cammell Laird, fuel storage facilities obviously like Shell, Texaco or Cepsa, even petrol stations if they hold underground tanks. But the point is that we will have a publicity campaign, a questionnaire, and the Environmental Agency will go direct to those establishments that are likely to be caught in the net and obtain the information from them. How long that would take, the hon Member asked me, I have no idea. The impact on some businesses will obviously be greater than on others. One would hope that major establishments like Shell and Cammell Laird already have some of this planning in place and it may just need updating and putting into the correct form. The Leader of the Opposition asked whether the new Ordinance was just an extension of the previous Regulation or a requirement of the directive. Obviously it is a requirement of the directive but it extends to the provisions of the original Ordinance.

HON J J BOSSANO:

That is not what I asked, Mr Speaker, what I asked was when the original Regulation was brought in as a consequence of the directive on the Seveso incident of chemical plants it was obvious that the whole thing was academic because the conditions did not exist in Gibraltar. What I am asking, is it that the new directive that replaces the old one has a wider scope and affects more premises than the last one did? That is the question.

HON LT COL E M BRITTO:

I apologise to the hon Member. Yes, the short answer is yes, it does. We expect that it will catch a number because the original had not got anybody, so yes, we do expect it to extend over a wider field. The point that it does not apply to military establishments arises out of a direct requirement of the directive itself. It is not at the request of UK or anybody else. The wording in the legislation is word for word what there is in the directive. I think that covers all the points raised by Opposition Members.

Question put. Agreed to.

The Bill was read a second time.

HON LT COL E M BRITTO:

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

Question put. Agreed to.

## THE ENVIRONMENTAL PROTECTION (DISPOSAL OF DANGEROUS SUBSTANCES) ORDINANCE 2000

HON LT COL E M BRITTO:

I have the honour to move that a Bill for an Ordinance to give effect in the law of Gibraltar to Council Directive 96/59/EC on the disposal of polychlorinated biphenyls and polychlorinated terphenyls, be read a first time.

Question put. Agreed to.

SECOND READING

HON LT COL E M BRITTO:

I have the honour to move that the Bill be now read a second time. Polychlorinated biphenyls or PCBs as I shall refer to them from now on, have long been recognised as posing a threat to the environment because of the toxicity, persistence and tendency to bio-accumulate, that is to build up in the bodies of animals particularly at the top of the food chain. Although in the past they have been used to a significant extent, the overwhelming consensus now is that the risks posed by PCBs greatly outweigh any benefits of using them. Internationally the use of PCBs has been progressively restricted since the 1970s and background levels of PCBs in the environment are falling as a result. However, it is recognised that the PCBs which remain in existing equipment pose a continuing environmental threat particularly to marine life as it is anticipated that PCBs will continue to migrate towards the sea. PCBs are now mainly used as di-electric fluids in transformers and capacitors but where more widely used before 1973 as hydraulic fluids, heat transfer fluids, lubricants and plasticisers in such products as paints and carbonless copying paper.

In September 1996 EC Directive 96/59/EC on the Disposal of PCBs and PCTs was adopted. This contains requirements for the preparation of inventories, labelling and treatment of all significant PCB holdings as well as tighter regulation of PCB treatment facilities. The present Bill and its proposed amendments to the Public Health Ordinance now transpose these provisions into our national law. The Bill prohibits any person from holding any contaminated equipment, that is, equipment which contains or has contained PCBs after 31st December of this year, unless he is registered and further prohibits the holding of any PCBs and equipment containing them after 31st December 2010 irrespective of registration. In other words, holders of equipment containing PCBs have to register immediately and this has to be phased out within 10 years. The Bill also imposes a duty on the holder of any contaminated equipment to label the equipment and premises in which it is located. The label must record that the equipment is and the premises contain equipment that is contaminated by PCBs. The enforcing authority is required to compile an inventory of contaminated equipment and review it on an annual basis. The said inventory is to be available for public inspection without doubt.

Finally, the Bill amends Part 5A of the Public Health Ordinance by tightening controls and specifying records to be kept at waste installations treating PCBs. I commend the Bill to the House.

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

HON DR R G VALARINO:

Mr Speaker, we will be voting in favour of the Bill. It is obvious that this is another piece of EC legislation. The Bill relates to Council Directive 96/59EC on the disposal of PCBs. The directive repeals Council directive 76/403/EC of 16th September 1996 which says "whereas in order to dispose of PCBs because of the risk they present for the environment and for human health general obligations concerning the controlled disposal of PCBs and the decontamination and disposal of equipment is necessary". The only question I would like to put to the Minister is, has he got an idea of what public and private undertakings are there in Gibraltar that will be affected by this legislation considering the various things involved? I imagine places like the

Generating Station, garages, wholesalers, I wonder whether even wholesalers that sell batteries for cars will be involved?

HON J J BOSSANO:

This places I think if I have read it correctly a responsibility on the persons who might hold equipment which falls under this legislation to do something about it in terms of registering their possession of these things, the contaminated equipment and so forth, and then getting rid of them within 10 years. It seems to me that clearly the normal thing is that it is the responsibility of people to know what the law is and to know how to comply with it in what is a highly technical area. Unlike the other one where it seems to me that there is likely to be a threshold of size given that it is a major hazard, in this one it would seem that any of the equipment mentioned where PCBs used to be previously the norm and are no longer might still well be around in Gibraltar. In that case people will be guilty of an offence if they do nothing about it but they may well not know how they go about actually finding out whether their equipment is contaminated or free. Presumably one other thing that would need to be done would be that in the disposal of this there must be separation like there was in the case of batteries, presumably from normal refuse collection and refuse disposal, otherwise it is likely to finish up in the sea if we incinerate it with normal waste and then get rid of the ashes. So presumably there will have to be separate collection facilities which I am not sure that there is presently as was the case with things like nickel and mercury in battery disposal.

HON LT COL E M BRITTO:

Yes, Mr Speaker. Let me start with the Leader of the Opposition first because it is a more general point. The same thing as I explained in relation to the previous Bill will be undertaken in relation to this one. There will be a publicity campaign and firms that are likely to be affected will be written to. The Leader of the Opposition correctly identified that the problem here is a little bit more complex. He asked whether there was a threshold. Indeed there is. There is a threshold of five cubic decimeters which by a rapid calculation I can tell the hon Member it is five litres and we are talking mainly about transformers and capacitors, it is where we are most likely to find this but I asked the question when I was being briefed on this when we are talking about a transformer the size of a table or a transformer the size of a telephone and the answer is that we are talking in terms of transformers roughly one cubic foot in volume which I need not tell the hon Member is relatively small. The catchment area is likely to be wide. We do know that the Electricity Department does not have any equipment that contains PCBs but to give the hon Member an indication the Electricity Department transformers typically hold between 900 and 1,100 litres of coolant fluid which does not contain PCBs and this gives an idea of the size of the problem. We are more likely to be dealing with maybe the MOD on this occasion, the OESCO Power Station or operators like Nynex and Gibtel but I am told that smaller transformers above this threshold of five cubic decimeters could also be used in connection with portable generators. A food wholesaler might be caught in the net if he has equipment on the premises as spare parts applying in the case of a power cut. Persons using pre-1970s heavy machinery, for example, large neon signs could, in theory, be affected but I am told it is unlikely. There are powers in the Ordinance for regulations to be made to assist the Environmental Agency but obviously if one dumps it into the sea it defeats the whole object. They will have to be disposed of under proper arrangements. I think that covers the Hon Dr Valarino's point about who is affected and I just reiterate what I said before. There is not a magic list either for this or for the previous Bill saying exactly who is affected. We need to go out into the market and inform people and ask them to register.

Question put. Agreed to.

The Bill was read a second time.

HON LT COL E M BRITTO:

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

Question put. Agreed to.

The House recessed at 4.15pm.

The House resumed at 4.30pm.

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 Merchant Shipping (Carriage of Dangerous or Polluting Goods) Bill 2000.

2. The Licensing and Fees Ordinance (Amendment) Bill 2000.

3. The Public Health (Amendment) Bill 2000.

4. The Environmental Protection (Disposal of Dangerous Substances) Bill 2000.

**THE MERCHANT SHIPPING (CARRIAGE OF DANGEROUS OR POLLUTING GOODS) BILL 2000**

Clauses 1 to 12, the Schedule and the Long Title were agreed to and stood part of the Bill.

**THE LICENSING AND FEES ORDINANCE (AMENDMENT) BILL 2000**

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

Clause 2

HON J J HOLLIDAY:

I wish to move an amendment as follows; in sub-section (2) add the words "as from the date of coming into force of this Ordinance" after the word "effect" on the second line.

HON J J BOSSANO:

We support the amendment. The only comment that we made in relation to this was that we thought that if there was the possibility of doubt as to what the effect would be it would be better to avoid it and we welcome the fact that the Government have acted to do it.

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 PUBLIC HEALTH (AMENDMENT) BILL**

Clauses 1 to 6, Schedules 6 to 11 and the Long Title were agreed to and stood part of the Bill.

HON LT COL E M BRITTO:

Mr Chairman, with your indulgence, I would just like to point out that there is what we think is probably a typographical error in page 88 in the mathematical formula but I am not able, because of the very faint printing in the copy of the directive that I have here with me... I think that should be Q1 divided by Q plus Q2/Q

and so on. I do not think this is a formal amendment, it is a correction of the mathematical formula and if I can get that confirmed I will write in to give the correct formula.

HON CHIEF MINISTER:

If it later transpires that there is a misprint in the formula, that we can write in in the usual way before it goes to the printers and that would be regarded as correction of a typographical error rather than a substantive amendment.

**THE ENVIRONMENTAL PROTECTION (DISPOSAL OF DANGEROUS SUBSTANCES) BILL 2000**

Clauses 1 to 13, Schedules 1 and 2 and the Long Title were agreed to and stood part of the Bill.

THIRD READING

HON ATTORNEY-GENERAL:

I have the honour to report that the Merchant Shipping (Carriage of Dangerous or Polluting Goods) Bill 2000; the Licensing and Fees Ordinance (Amendment) Bill 2000, with amendments; the Public Health (Amendment) Bill 2000; and the Environmental Protection (Disposal of Dangerous Substances) Bill 2000, have been considered in Committee and agreed to and I move that they be read a third time and passed.

Question put. Agreed to.

The Bills were read a third time and passed.

BILLS

FIRST AND SECOND READINGS

HON MRS Y DEL AGUA:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the First and Second Readings of a Bill.

Question put. Agreed to.

**THE CRIMINAL PROCEDURE (COMMUNITY SERVICE ORDERS) ORDINANCE 2000**

HON MRS Y DEL AGUA:

I have the honour to move that a Bill for an Ordinance to amend the Criminal Procedure Ordinance to provide for Community Service Orders as an alternative punishment for offences, be read a first time.

Question put. Agreed to.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Monday 9th October 2000, at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 4.45 pm on Tuesday 12th September, 2000.

## MONDAY 9TH OCTOBER 2000

The House resumed at 10.05am.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon K Azopardi - Minister for Trade, Industry and Telecommunications
The Hon Dr B A Linares - Minister for Education, Training, Culture And Health
The Hon J J Holliday - Minister for Tourism and Transport
The Hon Lt-Col E M Britto OBE ED - Minister for Public Services, The Environment, Sport and Youth
The Hon H A Corby - Minister for Employment and Consumer Affairs
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social Affairs
The Hon R Rhoda QC - Attorney-General
The Hon T J Bristow - Financial and Development Secretary

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon Dr J J Garcia
The Hon J L Baldachino
The Hon Miss M I Montegriffo
The Hon Dr R G Valarino
The Hon J C Perez
The Hon S E Linares

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 statements on the Table.

Question put. Agreed to.

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

(1) Statement of Supplementary Funding (No.14 of 1999/2000).

(2) Statement of Consolidated Fund Reallocations approved by the Financial and Development Secretary (No.15 of 1999/2000).

Ordered to lie.

### BILLS

### FIRST AND SECOND READINGS

**THE GIBRALTAR REGULATORY AUTHORITY ORDINANCE 2000**

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to make provision for the establishment of a regulatory authority in Gibraltar for the purpose of performing functions assigned to or conferred on it, to appoint a person (to be the Chief Executive Officer of that authority) to conduct the affairs, exercise the

powers, discharge the duties and perform the functions of that authority, to grant powers to that authority, to provide for the delegation of functions by that authority, the payment of monies to it, the meeting of its expenses and for its accounting and for purposes connected therewith, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill provides for the establishment of the Gibraltar Regulatory Authority, the appointment of a Chief Executive for it, and its functions and powers and how the authority's expenses are to be met. Several EU Directives require that a national regulatory authority carry out certain functions. The Government are taking the view that it would be neither cost effective nor efficient to establish a national regulatory authority separately for each function. For example, we now require a regulatory authority in the context of the telecommunications directives that we are about to consider in legislation later on in this sitting. We also require a National Regulatory Authority for the Data Protection Directive that the House will be dealing with shortly. Similarly, the Broadcasting Liberalisation Directive that we need to deal with shortly requires a Regulatory Authority and, finally but not exhaustively and exclusively to the extent that there is evidence of liberalisation and de-regulation in the Post Office, postal services which is already the case in respect of parcels, over the weight of 200 kilograms, there is also the need for a Regulatory Authority.

Mr Speaker, in a small place like Gibraltar it would simply be ineffective and inefficient in terms of resources and the availability of skilled personnel to have a separate authority for each of these functions with the necessary staff, with the necessary resources, with the necessary office accommodation, especially bearing in mind that in their functioning the Regulatory Authority under several directives requires a degree of arms length from the Government. Some directives require that some functions of the Regulator be discharged completely at arms length from the Government, a phrase which in the directive is referred to as "the Member State" as opposed to "the National Regulatory Authority". In others the Regulator has to have partial independence in respect of some of his functions. Therefore, what this Bill does is simply to set up a framework, to set up an organisation, specifying how to do its recruiting, specifying how it will be resourced, specifying how it must account, specifying how it must report and then once this organisation exists this particular Bill does not endow it with function in any particular area of Community or domestic law but once it exists it will be open to this House to say "ah, if the Data Protection Directive requires the Government to appoint a Regulatory Authority it is open to this House to say that for the purposes of this or that future piece of legislation the Regulatory Authority for Gibraltar will be the Gibraltar Regulatory Authority". What powers, duties and responsibilities and what measure of independence from the Government that National Regulatory Authority may require in any given area of activity is a matter for the legislation legislating in that area of activity and appointing the National Regulatory Authority as the Regulatory Authority for the area of that piece of legislation. For example, when we go, later today, to consider the Telecommunications Bill, hon Members will see that there are many powers and functions in that Bill given to the Regulatory Authority and it is that Bill that decides what the powers of the Regulator are and in what area he has got to act under his own discretion in respect of the business of telecommunications. The Data Protection legislation, when that comes through in due course, has different degrees of independence requirement, different sorts of functions and therefore that legislation will provide the functions and powers of the National Regulatory Authorities in so far as concerns data protection and so on and so forth.

Section 3 of the Bill establishes the Authority, its status and functions. It also provides for the appointment of a person to be the Chief Executive Officer of the Authority. The Authority is established as a statutory body corporate. The appointment of

the Chief Executive would be for a fixed term and without prejudice to the provisions relating to eligibility and independence contained in section 8 could be terminated on the grounds of incapacity or misbehaviour. Section 4 provides for the appointment of a person to perform the functions of the Chief Executive Officer on a temporary basis.

Mr Speaker, I cannot remember in what piece of legislation, it may have been the Income Tax Appeals, the Leader of the Opposition may recall better than I can. There was this question that we discussed about whether a power of appointment expressed in these terms was an attempt by the Government to be able to appoint public officers into the civil service without going through the constitutional route of Public Service Commission. That is not the case. The Government could designate a public officer to be the Chief Executive of this statutory corporation but then the Government would not be recruiting that Officer into the civil service, he would already be a member of the civil service, in which case it would just be a question of deployment of an existing public officer to perform a particular role or the Government could recruit somebody for this particular post, Chief Executive of the Gibraltar Regulatory Authority from outside the civil service in which case the Government would not be appointing a civil servant, would not be appointing a public officer, but would be making an appointment akin to the appointments that are made, for example, under the Gibraltar Development Corporation.

Mr Speaker, Section 5 permits the Authority to authorise a member of its staff to do on its behalf anything that the Authority is authorised or required to do and the Section also commits the Authority on terms to delegate the discharge of any of its functions to suitably qualified or competent persons or agencies. But hon Members will see from their study of that Section that any such delegation first of all has to be on terms that does not derogate from the Authority's own competence in the matter and secondly has to be on terms that the authority is always free to cancel the delegation at any time without liability and compensation.

Section 6 provides for the establishment of a corporate seal for the corporation and Section 7 explains and provides how the Authority is to be funded by monies appropriated by this House and also provides for the payment of salaries, pensions, gratuities et cetera. to employees.

Mr Speaker, Section 8 provides for the prohibition of certain persons from holding posts in the Gibraltar Regulatory Authority specifically excludes from appointment and also from being the beneficiary of a delegation of powers Members of this House, including Mr Speaker himself. The Section provides for the Authority to take account of Government policy when carrying out its functions but only to the extent that it is lawful to do so. In other words, when an Ordinance passed in this House or when a Community obligation makes it clear that the Authority is required to act with complete or some measure of independence from the Government, then the Authority is not only not required to take Government policy into account but is actually prohibited from taking Government policy into account in the exercise of its functions. The Authority is able to take Government policy into account only if and to the extent that it is lawful for the Authority to take Government policy into account when exercising its regulatory functions.

Section 9 grants powers to the Authority to do all things necessary ancillary or reasonably incidental to the carrying out of its functions including the power to hold property, contract services, employ or take on secondment, persons and compile reports. The employment or taking on secondment of persons can only be done on terms which must be subject to the written approval of the Chief Secretary.

Mr Speaker, Section 10 imposes certain accounting obligations on the Authority and provides for the Principal Auditor to examine and certify its accounts. It also provides for the accounts of the authority to be laid in this House.

Section 11 establishes the circumstances in which the Authority and its employees may be sued. It is the same formula as is

contained in the Financial Services Commission Ordinance. Basically, they cannot be sued for anything that they do in good faith. It is the usual immunity from suit given to regulators so that they can do their statutory regulation without fear of being sued for what they do in good faith.

The Ordinance also requires in Section 12 the authority to draw up an annual report of its activities and imposes on the Government an obligation for that report to be laid in this House. That is in addition to the financial accounts. The financial accounts are to be audited by the Principal Auditor and also a report of its activities as regulatory authority are both to be laid in this House.

Section 13 imposes on the employees of the Authority the usual duties of confidentiality that are attached to the regulatory functions normally and Section 14 enables the Chief Minister as the Minister responsible in this area to make regulations incidental to the implementation of the legislation. I commend the Bill to the House.

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

HON J J BOSSANO:

Mr Speaker, most of the content of what the mover of the Bill has had to say has dealt, in my view, not with matters of principle but to taking us through the sections and telling us what it does. There are a number of issues that this Bill raises with which we are not in agreement and therefore we will not be supporting this. I must say, from a drafting point of view, it seems peculiar to draft in Section 3 that the regulatory authority shall perform the functions assigned to it in this Ordinance and then to be told, in moving the Bill, that no functions are assigned to it in this Ordinance. But then the one thing that has been obvious from our study of the Bill and absent from the mover's explanations of the Bill is exactly who is the authority, that is, who are the people that make up the Authority. If it is a body that is responsible for carrying out functions and employs a Chief Executive then who is that body composed of? There seems to be nothing here about setting up the Authority in terms of appointing persons to it to be the governing body. In the absence of a governing body it would seem that the Chief Executive reports directly to the Chief Minister and consequently takes instructions from him as opposed to instructions from a policy-making body. I do not think there is a parallel in that in any other piece of legislation we have had in this House and if we have got a Chief Executive who is appointed by the Chief Minister, can be dismissed by the Chief Minister and works to the Chief Minister, it seems to us that ultimately the regulatory authority is the Chief Minister because there is nobody else involved. I cannot imagine anybody who is in a position of being exposed by law to being dismissed for misbehaviour would run the risk of saying no to the Chief Minister without that immediately coming under the definition of misbehaviour and finding himself under sub-section 7(1) that the Chief Minister will then be able to terminate his appointment for misbehaving by disagreeing with him.

The functions that have been allocated in the Telecommunications Ordinance obviously we will not pre-empt the debate in that Ordinance by dealing with it now but of course one cannot talk about any other functions because there are no functions in this Ordinance and the only functions are the ones in the other Ordinance.

The Chief Minister mentioned the previous concerns we have had in this House on the question of appointment in another law and in fact the wording was altered so that it was somebody being designated to the post so that he was already a civil servant but was being allocated duties which were the duties of the functions of the particular post that had to be carried out. What I have difficulty in understanding is that if in fact we now have a situation where the Chief Minister can appoint and dismiss somebody who is not a civil servant but who appears to be in exactly the same position as a civil servant except that in the case of a civil servant the appointment is at Her Majesty's pleasure instead of "His Majesty's" pleasure I think we are creating what may be an important constitutional development. But I think that until now

the position has been that there has been a contractual arrangement. When the Government have contracted out as they still do in many areas and in some new ones since 1996 work that it wishes to have done by a contractor the fact that the contractor's employees may be doing what was previously done by Government employees does not make the contractor's employees civil servants. This is a direct appointment in a statutory body. This does not mean the definition of a public officer in the Constitution, then how does one distinguish what is a public officer and what is not a public officer in an area of employment where it is possible for the job to be done either by a public officer or not by a public officer. It is clearly not the content of the work that determines whether the person is a public officer or not, we have just been told that by the mover, that it could be done by designating somebody who is already in the public service to do this post as opposed to appointing somebody who is not in the public service.

The need for the Government to set this up has been primarily justified on the basis that there are requirements under EU law to set up national regulatory authorities and that rather than having a number of such authorities it makes more sense to have one. There is no need to set up, in our view, the Gibraltar Regulatory Authority to do that because it is possible to use some of the existing entities in the Government, including Government Departments, to be able to carry out regulatory functions. Let me say that if it is a question of being at arm's length from the Government it is difficult to see that this creates a body that is at arm's length because that would require that there should be a governing body which is the corporate entity that is the authority which would be, as happens in other Ordinances, made up of people appointed by the Minister but nevertheless exercising their functions independent of the Government. It may be that we missed it because we have actually looked for it as one would expect to be naturally there, that there should be a section that says the Authority shall consist of so many people appointed as other Ordinances do. I cannot see how this can be considered to be, irrespective of what other Ordinances say, can be independent of the Government if it seems to consist as far as we can tell so far of possibly just one person who is the Chief Executive. I suppose whether he requires additional staff to be employed or not will depend on what is required of him besides what there is in the Telecommunications Ordinance which we do not know at this stage.

The provisions for the salaries and the expenses of the person involved have to be appropriated by the House of Assembly presumably in the Appropriation Bill from the Consolidated Fund. I do not know whether that means that it will be an item of expenditure there because it does say here that the funds appropriated by the House of Assembly will be for the purpose of paying to the person appointed under Section 3(3) his salary, pension, gratuity and so forth. In that respect again it seems to be similar to the Personal Emoluments that we appropriate in the Appropriation Bill in respect of other public officers. The provisions on the powers of the Regulatory Authority, of course, it is difficult to try and relate those powers given the fact that it has no functions. In looking at what the Authority has power to do then one would normally say "why should the Authority need to be able to do some of the things that are here in order to perform the functions?" We do not know what functions are going to be performed but as I have said if the powers that exist in Section 9 of the Regulatory Authority are those that are related to the performance of the functions compared to the authority in section 3(2) and we go to section 3(2) to look for what those functions are we are told the functions assigned to the Authority are those in this Ordinance, which is none or in any other Ordinance which we will discuss when we come to the other Ordinance. When we are looking at this draft in order to try and understand before we come to the House what it is we are being asked to vote upon, which is what we are required to do, then we look at a section which tells us there are all these powers so that the Ordinance is able to discharge and perform its functions, which makes sense and then we say where are the functions that it has to perform so that we can see whether the powers are necessary, adequate or excessive and we go to 3(2) and in 3(2) we get told, not as one would expect from looking at section 9 what those functions are, but that the functions are what there is in the Ordinance and there

is not any or what is in another Ordinance which we have not yet debated. Given that, it would seem to us that it would be better that the powers should be related to what the Authority should be doing in a particular case as opposed to here where it is not related to what it is doing in a particular case but whatever it might be required to do and of course what this provides is not just for the list of possible requirements for regulation that have been mentioned by the mover because the Regulatory Authority can in fact be through being mentioned in other Ordinances and presumably in subsidiary legislation under Ordinances if that was possible under the enabling provisions in the primary legislation can be made to be the only regulatory body for everything in Gibraltar and by the logic of expense and resources in a small place, if that applies to the two or three things that have been mentioned it can be made to apply to anything else. But we can debate the wisdom of that or not in this Ordinance because this Ordinance simply creates the possibility and the exercise that is made of this possibility depends on what happens from now on.

When we look at section 13 on the issues of confidentiality, again it seems to me that some of these provisions will only make sense if one knew what was in the mind of the person drafting this in terms of what are the functions that are expected. In the absence of any functions again it is not possible for us to make a judgement of the adequacy or inadequacy or desirability of any of these provisions because clearly they depend on what is the area with which the Authority is dealing. We believe that the requirements to comply with European Community law can easily be met without setting this up and we believe that if there is going to be a Regulatory Authority then it should be at arm's length from the Government and we believe that in any case it is possible for a Government Department to be regulating people that it licences and therefore not to have an Authority but if we are going to have an Authority either it is independent of the Government, in which case the Authority appoints its employees even though the Government pick the individuals who will be running the Authority, then once they are appointed they should be free to exercise their judgement in the decisions that they take and therefore we will be voting against it.

HON CHIEF MINISTER:

Mr Speaker, because I am not prepared to assume against the hon Member that he is simply trying to be obtuse and misleading, I am forced to the only alternative conclusion which is that he has only read this Bill ten minutes before arriving in this House today. Most of the things that he says are not provided for in the Bill are indeed specifically provided for in the Bill. Mr Speaker, before I get into responding to the hon Member on the technical details that he has risen, for the hon Member, who spent eight years in office, dismantling the civil service and replacing it by a parallel service comprised of unaccountable companies and things of that sort to stand up in this House and suggest that this transparent entity that the Government are establishing falls foul of some high moral principle can only mean that the hon Member believes that his philosophy in life is for people to do as he says and not as he has done himself for eight years. How does the hon Member explain his sudden concern, which incidentally should not be awakened by this innocent piece of legislation, but how does he suddenly explain getting to his feet in this House, talking about parallel civil service when he set up the Gibraltar Information Bureau and other Government companies to which he transferred 40 per cent of Government activity and when he appointed Mr Harry Gomez to take powers on delegation from the Commissioner of Income Tax to pursue people for unpaid PAYE, what was he doing? Where was his commitment to the principle that he now, with no degree of credibility, if he does not mind my saying so, espouses? He was a man like no Chief Minister before him that has presided over the systematic disembowelment of everything that is cast in our system of Government about the independence of the public administration and the independent observing functions from Ministers and the exercise of them by their cronies. He who was the master of that activity and who has watched us during the last four years dismantle the results of his ill labour for four years now has the audacity to stand up in this House and talk about the need to avoid the establishment of a parallel civil service.

Mr Speaker, the hon Member is the Leader of the Opposition and he does therefore entirely deserve serious responses to all the questions that he has raised and he will get them, but in hearing the responses to his questions he should not overlook the fact that as far as the Government are concerned it is the height of duplicity that he should stand in the House and make the sort of address that he has just made even if everything that he says about this Bill were true, which it is not. His own track record, coupled with the fact that almost everything that he has said about this Bill is inapplicable, puts into context the fact that he believes that his own past is to be obliterated from the memory of man and that people should now do as he says and forget about what he did and not judge the sincerity of his own statements now by comparing them to whether he put them into practice when he was in Government and also shows such scant knowledge of the details of this Bill that I think he has been thinking on his feet as he has been wading through the pages now as he has been doing, going through the pages one at a time, picking up the headings and just expressing a view on each item. Mr Speaker, section 3 which the hon Member says is a drafting contradiction is not a drafting contradiction. The only contradiction about the powers is his own. First of all when the hon Member makes the point about section 3, he says "well as a matter of drafting technique I do not see why we are saying why the Corporation shall have the powers given in this Ordinance when this Ordinance does not give it any powers" but then of course.....

HON J J BOSSANO:

I never said powers, I said functions.

HON CHIEF MINISTER:

Functions, Mr Speaker. Then, when the hon Member flicks through the Ordinance he will find that there is quite a lot about powers and functions in the Bill. There are things about functions as well, yes there is a lot about functions in the Bill, it is perfectly clear that the regulatory functions of this organisation are going to be the functions given to it by this House in other legislation. This is not the purpose of this Bill. The purpose of this Bill is to set up a structure and therefore why the hon Member should think that this should say and he should regulate the telephone system he will only regulate the telephone system if this House in other legislation decides that he should regulate the telephone system and the terms upon which he can regulate the telephone system. I would have thought the concept was relatively straightforward for the hon Member to grasp because then he says "what is the point of giving him the powers in section 9?" Mr Speaker, what section 3 says is that he shall have the powers and functions given to him in this and any other Ordinance. The hon Member appears to believe that doing things by contract, how he used to do it, give a contract to whoever he likes, in whatever terms he likes to discharge whatever functions he chose. Yes, because he said that it is all right that it is done but the hon Member is arguing to prevent me from saying what I need to say simply by heckling and shouting me down. It will just take me longer but he will not be able to avoid hearing what the Government want him to hear on this issue.

The hon Member said that at least if it is done by contractual arrangements then the employees of the contractor are clearly not public officers. Mr Speaker, the hon Member may think that doing semi-public functions through contracts with the private sector are transparent and accountable way of doing so, no one else in Gibraltar thought..... but look if he thinks that that is transparent and accountable, the hon Member cannot think that this is any more transparent and accountable unless the only thing that motivates the hon Member is that no one else in Gibraltar should have any authority, never mind if it is less than the one that he reserved for himself. At the moment the hon Member appears to believe that so long as it is done by a private contractor which he can hire and fire, that is okay, but if it is done through statute, in a way which is drafted to be transparent, report to the House, account to the House, accounts to be audited by the Principal Auditor, independence of employment, that somehow that is bad. Mr Speaker, the problem with the hon Member is that he is so convinced that the way he used to do things, which everybody rejected, is good and right that he does not recognise

improvements when he sees them because obviously he does not think that what he was doing was capable of improvement.

Mr Speaker, the hon Member asks who is the Authority? Who are the people who make it up? I ask myself, has the hon Member read the Bill? The Bill sets up a statutory Authority and it says that the functions of the Authority shall be vested in terms of the discharge of them in the Chief Executive. The Chief Executive of the statutory body has got to be appointed. Thereafter, he appoints whatever staff he needs to discharge his functions. If the hon Member does not see it there it is because he has not read it. Is the hon Member saying that that is not there? I will tell him where it is so that he can go away and he can read it before the Committee Stage. Mr Speaker, Section 3 allows the Minister to appoint the Chief Executive. Somebody has got to get the ball rolling, somebody has got to appoint the Chief Executive and then if the hon Member reads Section 7(1)(c) he will see that there shall be paid from funds appropriated by the Assembly for the purposes to such persons as the Gibraltar Regulatory Authority may employ or take on secondment under paragraph (d) in Section 9(2), salaries et cetera and then it goes further on to say that under the powers in Regulation 9(2)(d) the Regulatory Authority, which once the Executive has been appointed means the Executive employ or take on secondment any person as the Gibraltar Regulatory Authority may, with the consent of the Chief Secretary determine are necessary.

Mr Speaker, Regulatory Authorities all over the world are set up on the basis that there is a regulator. In England the Regulatory Authority is a regulator and he employs people as he needs. The hon Member does not appear to have grasped, from a reading, if he has done it, of this Bill, that the structure here is that and that it is in common with the structures anywhere else, namely, that there is a statutory Regulatory framework set up which could be an individual or a body and that once it is set up subject to certain functions that have to be reserved to somebody, then they operate on an independent basis. The hon Member said that there was nothing about employing people. Who are the people who make it up? The people who make it up cannot be there yet because there is still not the statutory structure to appoint them to but I will tell the House who I intend, for the hon Member's piece of mind, to appoint as the first Chief Executive of the Gibraltar Regulatory Authority and that is the man that the hon Member personally chose without any statutory structure, despite the fact that he is not a civil servant, that the hon Member chose and chose to appoint as telecommunications regulator designate as long ago as1994. They started the ball rolling. They decide, without regard to civil service or Government Departments or anything of the sort, they pluck whoever they want from, I believe this one was from the ranks of GBC, not an organisation in which the Government should have a hand, but still, they nevertheless went into GBC, they chose to pluck out an employee of GBC who was not a civil servant and they said "now, you will be the Telecommunications Regulator Designate". When we arrived in office, we found him there. We believe he does a very good job. We think actually he was a very good choice and all we do is that we keep the same appointment and we surround him with the necessary statutory structure and with the necessary degree of independence which he needs if he is to be able to discharge his functions in compliance with the directives.

Mr Speaker, for an hon Member who was when in office doing precisely this, the following words which I am about to cite from the hon Member of which he accuses this Bill is almost the epitaph of his entire eight years administration "reports directly to the Chief Minister, takes his instructions from the Chief Minister, so the Chief Minister might as well be the Regulatory Authority". That is as good a definition as I have heard of almost every aspect of public life in Gibraltar during the eight years that he was in office. Then, because the hon Member feels this compulsive need to criticise everything that the Government do whether or not he understands what the Government are doing, he has the audacity to suggest that this Government set up a statutory authority, with all the conventional elements of transparency and of reporting and of audit and the hon Member says that it means that he takes instructions from me. Mr Speaker, the hon Member may not understand when he recommends that this was definitely done by a Government Department, that doing it by a

Government Department would not be a compliance with the directive. The directive requires this to be done by somebody other than a Government Department. The hon Member, who spent so many years destroying the independence of the civil service as a body of administrators, clearly is now not distinguishing between the political independence of the public administration from the political Government of the day. The hon Member is not distinguishing between that and functions that need to be carried on by the Government or outside the Government. If functions have to be carried out by law outside the Government, then it is neither Ministers nor civil servants because in most democracies civil servants work and account to the Government of the day. I suppose that that is what the hon Member thinks should be the case in Gibraltar as well unless he wants us to be less than any other democracy in Western Europe. Therefore, in setting up a structure which complies with the Community Directive requirements for it to be at arm's length independent of the Government, by definition it cannot be a Government Department but of course somebody has got to set it up. In England all these are set up by Governments and Ministers but of course what happens is that in England, Oppositions do not automatically assume, perhaps because they knew how it used to be before, that everything that Government and Ministers have to do with is necessarily going to operate in a politically corrupt fashion. I do not know why the hon Member thinks there is anything wrong with people reporting to the Chief Minister. When this Chief Minister calls for reports to him in statute he is careful to impose upon himself an obligation to lay that report in this House so that the hon Member can also see what I am seeing. Instead of celebrating that as a significant contribution to open and transparent Government, the hon Member digs his head in the sand and invents obtuse points to suggest that this is a step backwards in transparency. Mr Speaker, there is nothing in this Bill which is capable of making the Gibraltar Regulatory Authority amenable to the wishes of the Government or any Minister in it except in cases where it is proper that they should do so. Not only have the hon Members obviously not read the Bill but they have not even heard because they could not be bothered to listen to my explanation of its points of principle because I took the specific trouble to tell them that in Section 8 there were provisions which prohibited the Regulator from taking Government policy into account. I shall read it to the hon Members "subject to sub-section (4), subject to Community obligations and this and any other Ordinance which may assign to or confer functions on the Gibraltar Regulatory Authority, the Gibraltar Regulatory Authority shall in the exercise of those functions, take account of the policy of the Government in respect of those matters to which those functions relate". In other words, he will take Government policy into account as is perfectly normal, proper and correct and happens everywhere in Western Europe, except in the circumstances required by sub-section (4) when Community law prohibits the Regulator from taking Government policy into account or when any other Ordinance of this House, giving him powers in a specific area requires him not to take Government policy into account. If that were not sufficiently clear for the hon Member, sub-section (4) goes on to say "when the application of Community obligations or the provisions of an Ordinance or both require that a function be exercised by the Gibraltar Regulatory Authority with complete or a degree of independence, then the Gibraltar Regulatory Authority shall only take into account the policy of the Government to the extent that it is lawful to do so".

Mr Speaker, this Bill sets up a Regulatory structure which not only is capable of complying in those circumstances where it is required, with the substantive obligation of arm's length in cases where it is required to but does so in a way that subjects the behaviour of the Regulator to the scrutiny of this House not only through the tabling of its accounts and a report of its activity but also because this House is the source of funding for it and it strikes me as odd that..... in passing I might tell the hon Member since he thinks that this has been plucked from the sky and that this is something that has been written by somebody who just wants to give power to himself as if there was no precedent for it, that most of this is drawn straight from the Financial Services Commission Ordinance which the hon Member introduced into this House when he was in office.

Mr Speaker, I have already covered the fact that on the one hand the hon Member suggests that this is not at arm's length and on the other hand suggests that this should be done by a Government Department as if to suggest that when he was the Chief Minister of Gibraltar Government Departments were allowed to do what they pleased regardless of ministerial steer or regardless of policy or regardless of instructions. I have already told the hon Member why for Community law reasons it cannot be a Government Department but what I think is equally odd is that the hon Member should suggest that if it is a Government Department then that is arm's length from the Government. In other words a civil servant working in one of my Colleagues' department, the hon Member thinks is freer to be independent of the Government and its policy than people working under a statutory authority, set up outside of the civil service, funded separately by this House, accounting separately to this House and operating under statute that prohibits them from taking Government policy into account when the law so requires. Mr Speaker, I have learnt already that it is almost impossible to persuade the hon Member of anything once he has already spoken on the matter but he has absolutely no justification for believing that this is any of the things that he has suggested and many of these sections, about employment, about accountability to the House, many of these things, the funding which the hon Member says is akin to the civil service, that is taken straight from the Ombudsman's Ordinance which he voted in favour and which he did not criticise. I realise that the hon Member's new colleague, Dr Garcia, voted against the Ombudsman's Ordinance because he did not think it had enough teeth but no one said then "well, what is all this about semi-public functions, civil servants, are you appointing Government officers or not?". The hon Members unfortunately because they are not sufficiently familiar with the Bill have not noticed not only that it is similar in many aspects to Bills that we have introduced into this House and which they have supported but it is actually that that one and this one were actually drawn in large measure from Bills that they brought to the House when they were in office.

Mr Speaker, the hon Member says..... and let me tell him that the funding provisions were drawn directly from the Ombudsman's Bill. The hon Member asks whether the Regulatory Authority, once we have established it can be appointed for other things. The answer is of course, that is why we have set it up. That is precisely why we have set it up, so that it can be appointed as the Regulatory Authority for other things, but it can only be appointed as a Regulatory Authority for other things by operation of law, either by a proper application of the Constitution or by an Act of this Parliament legislated in this Parliament. What is wrong with this Parliament saying "I now know the terms upon which the Gibraltar Regulatory Authority exists. It is now suggested to this Parliament that the Gibraltar Regulatory Authority should be appointed as the Regulator for the regulation of public transport....." for example, it is not one of the items we had in mind, I have just used it as an example which does not apply, and this House to say "yes, we think that it should be done". What is wrong with that Mr Speaker? Because the hon Member cannot think that there is anything wrong with that whilst at the same time telling this House that he does not think it is necessary to appoint the Gibraltar Regulatory Authority because to quote him "the Government could do this through some of the existing structures already available to it". The structures available to the Government are Government Departments, the Gibraltar Development Corporation or if we are willing to have recourse to the sort of way of conducting public affairs that he had recourse to which we are not, I suppose we could set up a limited company of which four Ministers could be the directors and then we could appoint that under a contract and that according to the hon Member would be all right to provide the Regulatory Authority accountable to nobody except to him. Mr Speaker, I believe that this is an extraordinarily transparent way of doing something and the hon Member has not said anything which is credible to displace the Government from its view that this is a proper, statutory, open, transparent, accountable, conventional way of providing for regulatory functions in a way akin to the way that it has been done in almost every other country of the European Community.

Mr Speaker, I know that nothing that I have said will have persuaded the hon Member. The Ordinance sets up in Section 3 the Gibraltar Regulatory Authority as a statutory corporation. The hon Member may not understand the significance of that and therefore wonders where is the guts of the Authority. But the significance of setting it up as a statutory corporation sole is that there is a legal entity who has a life in law separate from the individual who from time to time occupies the position. That is the significance of setting up a statutory corporation sole, that for the purposes of legal action, for the purposes of serving process, for the purposes of continuity, for the purposes of the ability to contract and own land, for the purposes of its ability to sue, for all of these purposes there is a legal entity with legal personality and continuity other than an individual who then has to transfer land and contract every time he is changed. The hon Member may think that this Bill, which incidentally has been drafted by several lawyers, not, I hasten to add, including myself, has no substance. The hon Member is mistaken. He has failed to understand the reason why the Ordinance does all that it does. Having set it up, it then goes on to create the position of office of Chief Executive and the Chief Executive is given by this Bill the powers to conduct on a day-to-day basis the powers that may from time to time be vested in the Authority. It gives him the power to authorise his employees within the Authority also to discharge those powers. It then sets out in detail how it can be funded. It sets out in detail how it must be accounted and to whom. It has specific provisions about independence and gives specific and detailed powers of what they can do and what they cannot do in an organisational sense as opposed to a substantive functional sense, if we can distinguish between those two concepts in that way. Therefore, Mr Speaker, it provides for all the things that regulations setting up a regulatory structure need to set up and needs to provide for as the hon Member should be familiar with given that he had to go through this exercise.

There are aspects of this Bill which if there were not other things in the Financial Services Commissions Ordinance would be about this length and would contain all these issues. The only difference is that the Financial Services Commissions Ordinance ultimately accounts to the Foreign Secretary, something that he tried to resist, rightly, and this does not account to the Foreign Secretary or to the Governor. This accounts to the elected Government of the people of Gibraltar of the day and I certainly refuse to accept that there is anything whatsoever wrong with that. I therefore commend the Bill to the House with the final remark that it is up to this House to decide whether it wishes in any given situation this entity should be the Regulatory Authority in that subject matter whenever it comes up, whether it is data, post office, telecomms or anything else. It is a structure which is available which complies with EU rules as to arm's length and independence which is available. The alternative, as I am sure the hon Members will know, they only have telecommunications to start to grapple with before 1996, since then we have had data protection and other issues, the alternative is that we have got to set up at much higher cost separate regulatory functions in different areas. One cannot just set up an individual and say "here, go and be a regulator". It is a non-compliance if one does not endow that person with the sufficient resources to enable him to properly carry out these functions and all this Bill says is that instead of the Government having to go through the expense of setting up separate regulatory authorities for all the things the law requires it to set up separate statutory authorities for, that we are setting up one body that can be endowed with the necessary resources and expertise but that can share many resources - office accommodation, secretarial services, receptionists, telephonist facilities, financial control. All those things can be shared by all the various regulatory authorities and the Chief Executive simply brings in expertise in the subject matter. Having got this infrastructure set up in this cost efficient way, if there is a need to regulate broadcasting, and it is not available in-house, certainly somebody will have to be brought in, just as the Financial Services Commission presently brings in different experts to regulate banking or insurance or company and trust work or investment services work, but the basic administrative infrastructure is there common to all of them and this is all that this Bill tries to do and, frankly, none of the criticisms to which the hon Member has subjected the structure we believe are justified either on the terms of the Bill or in the Government intention. I

accept, of course, that the hon Member cannot rely just on the Government intentions because that can change so I accept that the letter of the legislation has got to be appropriate and defensible but we believe that that is so and having explained to the hon Members why we have done this I would hope that notwithstanding the view that they have first taken that they will be able to support the Bill. I am happy to give way to the hon Member.

HON J J BOSSANO:

Mr Speaker, I am glad that he has relented in the final seconds of his long attack which failed to really explain. I wanted to interrupt the Chief Minister earlier because he was misquoting me and saying that I had said that the Bill did not make provision for the Authority to have powers and that that proved that I had not read it until I got to this House and just flicked through the pages. The Chief Minister was quoting me incorrectly. What I have said is in looking at this Bill as we have done on a number of occasions and studied it we have said to ourselves "well, there is a Regulatory Authority established in Section 3(1), what is it therefore?". We look at Section 3(2) and it says "to perform the functions assigned to it in this Ordinance and in any other one" and therefore we looked for functions in this Ordinance and could find none. What I asked the Chief Minister was if we had overlooked it and the functions were somewhere, could he tell us where they were? The answer is, there are no functions in this Ordinance because when we look at the powers in Section 9 and that is where I referred to the powers, the powers that are being given to the Authority are the powers the Authority needs in order to perform the functions in Section 3(2). We get to 9 and 9 sends us back to 3(2) which is where we were two minutes ago. So we go back to 3(2) and again..... it is a cycle where we are told in 3(2) "look for the functions elsewhere in the Ordinance" and when we get to the Ordinance we are told "look for the functions in 3(2)". I do not think this is a criticism which justifies any of the things which the Chief Minister has said. We have different views in life and we disagree with each other but it seems he cannot even have anybody questioning the adequacy of the drafting without seeing as a personalised attack which he then has to refute by saying we set up companies to do this and we set up companies to do that, so what? We are as entitled in this House to question what he does as he was when he was Leader of the Opposition. All I am saying is Mr Speaker if we have got the Bill in front of us and we are being told that there are functions in the Bill then we accept that because we are not law draftsmen. There may be functions somewhere in the Bill and we have overlooked it and we expect the Government to know and we raise it in the general principles because if we do not do that then we will have to do it in the Committee Stage. In fact, I would be grateful if the Chief Minister has an answer to that question, he would give me the answer now that he has decided to give way and if he has not got the answer then perhaps he can explain why we need to be saying the functions conferred in the Bill when in fact he said in his opening speech that there were no functions in this, that the functions had to be found elsewhere. The point that I am making is that we cannot evaluate whether the powers that are given are conducive to the performance of the functions if we do not know the functions. That does not seem to me a harsh criticism of anything other than logical analysis. I am sorry that my logical analysis seems to get under the Chief Minister's skin but it is quite obvious that being on my feet is almost sufficient. I would welcome an explanation.

HON CHIEF MINISTER:

Mr Speaker, the hon Member cannot be that disingenuous that he believes that everything that I have said, which was a strong attack and quite justified, given the sheer brazenness of the rest of what he said but he cannot be so disingenuous as to believe that everything that I have said is simply because I was upset that he had questioned the use of the word "power" or "function" in Section 3. The Leader of the Opposition is a master at sowing the seeds of trouble and of a dispute and then extricating himself as if he was the innocent hand by suggesting that people have been terribly harsh to him for saying something quite okay. Mr Speaker, it had nothing to do and he has been doing it all his life and getting away with it. The difference now is that this

Government are not willing to let him get away with the things that he has been doing in Gibraltar since 1970. Mr Speaker, was it I who was so harsh and so unable to take criticism on the basis of Section 3 and the words "power" or "function" when he referred to me as "His Majesty". *(Laughter)* Mr Speaker there is very little that the hon Members can say that upsets me. I have developed a very thick skin. What I am saying to the hon Members is that it does not take more than five minutes to catch him out at his own game. Here he was trying to get this House and presumably people listening on the radio to believe that he has been the victim of a quite unprovoked attack by this terribly aggressive and hostile and arrogant Chief Minister who will not even accept innocent, constructively delivered criticism when actually the reality of the matter is that he in his own address, unprompted by anything that I might have said already introduced into the debate more than enough element of personal abuse to have justified much more than I said.

Mr Speaker, I do not know whether the hon Member thinks I am more powerful or more inclined to exercise power than he was. All I can say is that I do not know who is more powerful or who was less powerful or who is more power hungry or less power hungry, whether it was him or me or who acted more majesterially or more regally, whether it was him or me. All I can tell the hon Member is that the only objective evidence available to us all to resolve that dilemma is that under my Government people in Gibraltar do not live or feel intimidated, not for loss of their jobs, not for loss of their businesses, not for loss of their contract, not for people who are not the Government's political friends failing to get Government work. I do not know whether that means that I am more or less power hungry, more or less regal, more or less arrogant, more or less tough. What I can tell the hon Member, for sure, is that Gibraltar feels better about itself under this Government than it ever did under his Government. *(HON J J BOSSANO: He is losing touch with public opinion).* Mr Speaker, if I am losing touch with public opinion it is between February and now because in February 58 per cent of the people felt much better under us than under him and, frankly, the hon Member is falling into all the traps that caused him to fall from office. If he confuses his own political wishful thinking for the reality that people in Gibraltar know politically contrived disputes when they see them and that people in Gibraltar know and realise when there is a black hand moving around behind the scenes of apparently innocent and innocuous disputes. The hon Members have to understand this. It was not I..... coming back to the main point, it was not I that spoke about the need to avoid creating a parallel civil service. Mr Speaker, it was not I who said that there was nothing in this Ordinance about employment or about the guts of the authority. It was not I who said that this man is hireable and fireable by the Chief Minister, which he is not. No, he is only hireable and fireable for misbehaviour which has a legal meaning and definition. Yes, for misbehaviour not for displeasure, not because I do not approve of his decisions, for misbehaviour. I just wish that those powers to dismiss for misbehaviour had been used more appropriately when they had been available to previous administrations in other areas. The idea that the hon Member has sought to create that this is just a sort of charade for naked power by the Chief Minister is a complete deception and the hon Member suggests that everything that I have said in response was just an over reaction to his little innocent point about power and function. Mr Speaker, the hon Member may be able to persuade his own band of fanatics with his own particular brand of disingenuity but he is not going to persuade anybody else by it. We can have however many debates he likes in this House and we can debate all the issues that he likes. The hon Member is perfectly free to disagree with everything that the Government say and say it in whatever terms he likes because Government Members are not squeamish but what the hon Member cannot do is say everything that he likes and then in the hope of getting a headline try to characterise successfully, incidentally, the last time he tried it just to dismiss the Government's own approach not as a genuine, justified, response to his address but as some over-reaction to a Leader of the Opposition only doing his job in a perfectly reasonable, uncontroversial and unprovocative way. Mr Speaker, the hon Member can carry on doing that until his heart is content and we will carry on pointing out to him that that is what he is doing.

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 Mrs Y Del Agua
The hon J J Holliday
The hon Dr B A Linares
The hon J J Netto
The hon R R Rhoda
The hon T J Bristow

For the Noes: The Hon J L Baldachino
The Hon J J Bossano
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon J C Perez
The Hon Dr R G Valarino

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

**THE INCOME TAX ORDINANCE (AMENDMENT) ORDINANCE 2000**

HON CHIEF MINISTER:

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

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, Section 4 of the Income Tax Ordinance imposes an obligation of official secrecy and every person under an official duty or employed in the administration of the Income Tax Ordinance to regard and deal as secret and confidential all information held in respect of any taxpayer's income. The wording of Sections 4(1) and 4(2) have been redrafted in order to dispel any possible doubt that might exist concerning the scope of the duty of secrecy under the Income Tax Ordinance and thus to ensure that the duty of secrecy is limited only to information regarding the income of any taxpayer. In practical terms this amendment will enable the Commissioner of Income Tax to provide information not relating to income to other Government Departments.

Mr Speaker, I do not know if the hon Members are familiar with Section 4 of the Income Tax Ordinance as it is currently drafted. It reads as follows:

"Every person having an official duty or being employed in the administration of this Ordinance shall regard and deal with all documents, information, returns, assessment lists and copies of such lists relating to the income or items of income of any person are secret and confidential".

The way that some people interpret the existing Section 4(1) is that in order for it to be subject to the list of confidentiality requirement the list, the document, the information, the return, the assessment list or copies of lists, in order to be subject to the Commissioner of Income Tax's traditional confidentiality, all those things have to relate to somebody's income and not to any other aspect of somebody's things which are not on a proper reading of Section 4 covered by confidentiality. For example, the

fact that somebody is registered or not or the fact should not be covered by the list of confidentiality on that proper reading of Section 4(1). Let me tell the hon Members how the situation arises. The Government now propose to network relevant Government Departments especially in the area of compliance in connection with arrears so that for example the Income Tax Office can know by looking at the Employment Department's records whether somebody is working or not and that the Social Security Department can know from looking at the records of the Employment Office and the Income Tax Office whether somebody should be paying Social Insurance Contributions and is not. The Income Tax Office can know whether somebody is registered for Social Insurance Contributions may be paying Social Insurance Contributions but is not paying PAYE. In other words, that Government are disjointed and that the public administration cannot have regard to information that it has in one Department to ensure compliance especially with revenue-raising measures of a piece of legislation that is administered by another Department. That is not going to change, there is not going to be that sort of access to people's income tax information in terms of the details of their income. The Government takes the view that of a proper reading of the existing section 4(1) it is only details of people's income that is subject to Commissioner of Income Tax confidentiality because the section reads ".....shall deal with all documents, information, returns, assessment lists, copies of such lists, relating to the income or items of income of any person..." in other words, that the words in the current section relating to the income or items of income of any person qualifies the whole of the list that has appeared before it and not just the last item. In order to avoid the possible argument that the proper reading of section 4(1) should go something like this, and I am just emphasising as I go along ".....and shall deal with all documents regardless of their content and all information regardless of their content, even the person's name and address, and all returns even if it is lists, the name of the employer, or all assessment lists even if it just contains innocuous information....." All of that is not subject to administrative confidentiality, they are only subject to administrative confidentiality in so far as it relates to income or items of income of any person, otherwise every time one administrative department, for example, the Social Security Department, says to the Commissioner of Income Tax "well, can you give me a list of people that are employed, as far as you are concerned..." that the Commissioner of Income Tax shall not be in jeopardy of saying "ah, under section 4(1) is that a list which is covered by statutory confidentiality", the answer is "no", unless the list contains details of taxpayers' income. If it contains details of taxpayers' income it is confidential by statute. If it does not contain details of people's income, it is not covered by statutory confidentiality. That is the sole objective of this Bill. I commend the Bill to the House.

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

HON J J BOSSANO:

Mr Speaker, on the basis of that explanation we have no difficulty in supporting the Bill. Let me say that as far as I am concerned my understanding is that the Section that exists in 4(1) as currently drafted was already being interpreted as it is intended to interpret this substituting section in the Bill before the House. In the past if the Commissioner has had to provide information in order to establish activity in a particular sector, then he either gave for example the income generated in that sector without identifying the recipients or the numbers of people working in that sector without identifying their income. In fact, the Commissioner himself in determining what information he could provide other Departments of Government with interpreted it in the way that has been explained. If it is a question that some doubt has arisen as to whether the present wording could be challenged and since it is obvious that the new wording should permit what was already being done to continue, we have no difficulty in supporting it.

HON CHIEF MINISTER:

I agree with what the hon Member has said, that has always been both at a political and at a senior administrative level the view taken by successive Governments including this one of the proper interpretation of the existing language which is why in the

Explanatory Memorandum to this Bill we say this Bill is intended as a measure to dispel doubts concerning..... we think that if all it takes is changing the position of four words which is all that this Bill does to allow the Commissioner of Income Tax to rest assured that he is not exposed to legal challenge because he has got to interpret and accept the interpretation that others may advise him as the correct interpretation of the section that if it is as easy as this Bill to dispel that doubt it is not a waste of parliamentary time to do it. Of course, I was aware of what the hon Member says about the collection of information generally for economic management purposes. What is now proposed is slightly different. What is now proposed and the hon Member may have heard me say at the time of the Budget is a unified collection system in respect of income tax contributions and social insurance contributions and that that means that the flow of information other than information about income will be more than has traditionally been the case of pure information management, in other words what is required now is lists rather than raw economic data but now, as then, it will remain the case that details about an individual taxpayer's income will continue to be protected by statutory confidentiality and that the new law does not change. This Bill does not change the existing law but simply clarifies it to be exactly what the hon Member had always assumed it to be.

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 today.

Question put. Agreed to.

The House recessed at 11.35am

The House resumed at 12.05pm.

**THE IMMIGRATION CONTROL ORDINANCE (AMENDMENT) ORDINANCE 2000**

HON CHIEF MINISTER:

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

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill now before the House is intended as a measure granting the Government, through the Principal Immigration Officer, greater flexibility than has previously existed in the field of residence permits. As Section 18 of the Ordinance now stands a person who is not in possession of a work permit may only be issued with a residence permit for a maximum duration of three months. New paragraph (ee) which is inserted by the Bill into sub-section (1) grants the Principal Immigration Officer the discretion of issuing residence permits in such a scenario, that is to say in the case of persons who do not have a work permit to issue a residence permit of up to six months. Similarly, paragraph (f) of sub-section (1) as it now stands in the Ordinance allows the Principal Immigration Officer to issue an annual residence permit where a person possesses a 12-month's work permit. The residence permit is issued in the case of a work permit holder for a maximum of 12 months. Under the redrafted paragraph (f) the Principal Immigration Officer now has the discretion to issue residence permits in such a scenario for a duration of anything between six months and five years.

Mr Speaker, hon Members will recognise that this is the statutory implementation of an announcement that the Government made

recently in respect to the length of residence permits that would be issued to long standing residents who are non-EU nationals and that, of course, includes not just Moroccans but also Indian nationals and any other non-EU national who has been a long term resident of Gibraltar. I commend the Bill to the House.

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

HON J J BOSSANO:

Mr Speaker, other than being told what is self-evident from reading the Bill we have not been told anything about the general principles raised by this Bill. I hope that we will be told something after I have spoken because it does raise a number of important principles we think.

If I deal with the second part first, which is the question of people with work permits, we have no problem in supporting that the maximum should be five years as provided in the new Bill but we want to know how this is going to work and we do not see the logic of the minimum being six months because my understanding is that the normal practice has been until now that when people get a residence permit on the strength of the work permit they get the residence permit concurrent with the length of the work contract. If somebody has a contract of employment for three months he would normally get a residence permit for three months. In the proposals before the House if somebody had a work permit for three months the Immigration Officer would be giving him a six months permit because it is related to the work permit, given the distinction that has been made in the opening remarks that if it is a work permit it is six months to five years and if it is not a work permit it can be up to six months.

We would also like to know how it is going to operate in the case of the over one year, given that presumably work permits are not going to be five yearly work permits because the standard procedure for those who require work permits is that they have to get a work permit for a maximum of 12 months and then when they re-register the work permit is renewed. It is difficult to see how the Immigration Officer can give somebody a five year residence permit on the strength of the one year work contract when in fact the law will continue to say that for the permit under Section (f) the Principal Immigration Officer is satisfied that the person holds a valid certificate of employment. He may be satisfied when he issues it at the beginning but if at the end of the first year something happens which leads to that person not having the employment renewed and the contract extended I do not see how the Immigration Officer is going to be able to comply with the law of satisfying himself that the permit is valid during the course of the five year period. These are issues of principle to the extent that we are in favour of the five years but we question how it can work by the amendment that is before the House on its own.

The other issue of principle is that we do not agree with the position of adding six months to the list of the other category in the first part of the section in the Ordinance because in fact we brought a Bill to the House which was supported by the Opposition which extended into 12 months and which made more sense from an administrative point of view. I would remind the House that the Bill brought to the House on the 13th July 1995 which was carried unanimously and which has not been commenced said that the Principal Immigration Officer could give somebody a permit of up to 12 months. The Chief Minister may remember that when the matter was raised in the House and I was asked for the reason for this, in moving this Bill, I pointed out that the provision was modernising the system to the extent that a permit can be given for a year or any number of days under the year at the discretion of the Immigration Officer and that the purpose of doing that was that the system that we have got in place is totally archaic and makes a nonsense of an efficient way of dealing with the issuing of residence permits and that is being perpetuated by the amendment before the House. It does not make sense that we should in 1995 have agreed to do something that was more sensible and now we seem to be going back to the pre-1995 situation by adding six months. What the Bill proposes to do, Mr Speaker, is to add to the existing periods an additional period of six months which means that as the law now stands and

as it will stand after being amended the Principal Immigration Officer, when receiving a request for a permit in the law which is still pre-1995 because the 1995 amendment has not been commenced may issue a two-day permit or a weekly permit. That means if somebody who wants to have a permit for three days, he cannot have a three-day permit, he has to have a two-day permit or a week's permit. If he is going to be between one week and two weeks he cannot have an eight day, nine day or ten days, he has to have either a one week permit or a fortnightly permit and he cannot come for three weeks, he has got to have either a fortnightly or a monthly and he cannot come for two months, he has got to be either monthly or quarterly and now we are extending that to say he cannot be four or five months, he has to be six because we are adding a new one that says a quarterly permit or a six month permit. The logic is that of course if the Government decide that it should not be a year as we agreed to do in 1995 and it should be six months then I put it to the Government that it makes more sense to say "the Principal Immigration Officer may issue a permit for a maximum of six months" but that is in contradiction to all the other sections which says two days, one week, fortnightly, monthly and quarterly which, as I understand it, are not being removed. They are all there because the Government are adding to (e) two little (ees) and making a provision which seems to me that if one reads that provision with all the others still in the law, then it must be that one is not able to go beyond six months for somebody that is over three months somebody who is asking for more than a quarterly permit. I cannot understand why as a matter of principle in the principles of the Bill we are not proceeding as we agreed to do in 1995 which was in fact to say if what the House is telling the Principal Immigration Officer is the maximum he can give it for well let us say "right the maximum is six months" or "the maximum is a year" but if we then say as was said a very long time ago for reasons that may have been valid at the time but which are incomprehensible nowadays, it has to be either one week or a fortnight or a month or three months but it cannot be multiples in between. Then it means that somebody who actually applies for a permit for a lesser time not knowing how archaic these provisions are, if he wanted a four months permit would be in the absence of the new provision would be given a three month and a one month. That still applies to anything below three months. I would put it Mr Speaker that if we were to repeal all the existing (a) to (e) then a permit of residence which entitles the holder to remain in Gibraltar for a period of time not exceeding six months must, by logic, include a two-day, a weekly, a fortnightly, a monthly and a quarterly. That is what we already did in 1995. Apart from that we are in favour of the provisions although in our view the six months should not be six months but a year because that is what we voted in 1995 and we do not see the reason for going back on the one year now, on cutting back, we already approved a year. *(HON CHIEF MINISTER: It was never commenced)* I know it was never commenced but the point I am making is we do not know why it was never commenced but here we have a Bill that was there since 1995 which was never commenced. I know the objections that the United Kingdom Government raised in 1995 which was that they thought that if we allowed somebody here for a year that could be a backdoor to immigration to the United Kingdom which was complete nonsense because residence in Gibraltar does not give anybody any advantage in jumping any immigration queue into the UK but that was the thing. I can tell the House that having had confirmation in September 1995 that the Home Office no longer had any objections and that the Governor would be given instructions to assent, I have a minute which is a record of that from 6th September 1995, it never materialised then or apparently since. I do not know whether this Bill is still unassented but if it is unassented then it certainly raises an important issue of principle. What is the difference between the proposed amendment in the House and the one the House approved in 1995 which makes it impossible for the Governor to assent to the previous one and makes it possible for the Governor to assent to this one when all this one does is, it moves in the two directions in fact, it says "if you have not got a work permit the most you can be in Gibraltar is six months and if you have a work permit the most you can be in Gibraltar is five years". We provided in the House that at the discretion of the Principal Immigration Officer, whether one has a permit or not, the most one could get was one year in Gibraltar. Although this is extending to five years the position of people with

work permits it is reducing to six months the position the House previously adopted in 1995 of giving one year to everyone. We would like, in making up our minds whether to vote, some indication of answers to the questions that I have put.

HON CHIEF MINISTER:

Mr Speaker, the hon Member has raised some issues which of course have nothing to do with the Bill here. I cannot tell the hon Member why he had difficulty in having the Bill that he brought to this House some time in 1995 commenced. The Legislation Support Unit of their own motion did a trawl of bits of legislation that were legislated but uncommenced, this one came up and I asked "can anybody give me an explanation why this piece of legislation which was legislated by the House and I think I am right in saying assented to but has not been commenced" and I received an explanation that there had been difficulty between the Gibraltar Government and the British Government about its content. The hon Member says that he has a minute saying that that was resolved. It is not a minute that I have seen and it is not a minute that is reflected in the information that has been shown to me from a file which as the hon Member knows I do not have access to but it begs the question of why if the problems were eliminated in September he had from September and May when he lost the election in May 1996 why he did not take steps to ensure that this Bill was commenced. I cannot answer this question. Those are issues from the previous administration. When we arrived in office in May 1996 we were not aware and no one advised us that this Bill had been legislated but uncommenced. There it was, it was a piece of previous administration legislation which it had shown them to leave uncommenced as far as we could tell. When we tried to find out why it had been left uncommenced we got an explanation which did not include that minute that the hon Member says that he has. That is where the matter rested. This legislation is not an attempt to pick up the pieces of that or to introduce that in a modified sense. It is a short piece of legislation to implement one specific measure that the Government decided recently that it would do. I agree with what the hon Member says, that if this were a tidying up exercise of the principal Ordinance as a whole then obviously it does not seem logical to say in (ee) that the man has the discretion to issue a work permit for any period not exceeding six months. Therefore, a day, half a day, three days, nine days, any permutation between zero and six months is available to him. Therefore, by definition, all the rest are necessarily included. Of course there is a difference between a piece of legislation which is simply designed to implement statutorily something that the Government have decided to do, than a Bill which seeks to consolidate or tidy up. Perhaps with a little bit more attention the consequences of this amendment might have been more elegantly reflected in a tidying up exercise, but of course (ee) is not inconsistent with the bits that have not been scrubbed off, it is that it makes those other bits superfluous and therefore I would ask the hon Members that if they are otherwise minded to support the Bill that it would not be necessary for them to withhold their support from something which is at worst a piece of drafting inelegance rather than something which has any substantive meaning.

HON J J BOSSANO:

Would the Chief Minister give way? The other point that I raised was, what is the problem with the year as opposed to the six months? The 1995 provision did the same thing of saying "any time up to 12 months".

HON CHIEF MINISTER:

Mr Speaker, I was going to get to that. It is really the same point, it is just that this Bill is not related in our minds to the previous one. It is not as if we took the previous uncommenced Bill and said "oh, no, they said 12 months, we do not think it should be 12 months, it should be six". It is just a question that as a separate exercise, and that Bill having been abandoned, so to speak, several years later the Government in discussion with the Moroccan Workers' Association and with the Transport and General Workers' Union agrees to these measures and the draftsmen are now instructed to do legislation to implement this

arrangement now. It is just not co-ordinated with, so there has not been a conscious decision to reduce 12 to six. Indeed, I do not know whether any issue would arise in relation of the difference between six and 12 and that is something that we can certainly look at. In future there is bound to be a need to revisit the Immigration Ordinance in general terms and we can certainly look at whether there is any reason why it should remain at six and not at some future time be increased to 12. It is not as if a decision has been made that it should be six rather than 12 simply that the decision that it should be six has been made without reference to the fact that in the past, five years ago, somebody had already decided that it could be 12. There is not an issue there as far as we are concerned and if it turns out that 12 is okay then 12 is okay. Certainly the Government would have no objection but it is something that we would need to look at and I hope the hon Member accepts that I cannot just agree to that now on my feet without having somebody advise me of the possible ramifications.

Mr Speaker, residence permits are not really issued concurrently with work contracts in the case of non-EU nationals. There is no power in the Employment Ordinance to issue a work permit for longer than a year. Whereas it is now the policy of this Government that when somebody has an indefinite contract or a contract for a year that they should get a residence permit for a year the hon Member would recall that it was not so under his administration where a distinction was drawn between the persons..... it was not the case in the case of the children of employed people under his administration and that is how some children of Moroccans who the parents themselves had a one year permit stayed out of free schools because the children themselves only had monthly or quarterly permits and the rules under the Education Ordinance were that one had to have an annual permit to get free schooling. We have tidied that up. The Employment Ordinance says work permits are only for a maximum of a year. If we wanted to increase that, which may not necessarily be desirable or advantageous even though we accept that the public statement that we made erroneously gives that impression, it should have referred to residence permits and not work permits, that the present intention is that residence permits should be for five years and the regime of work permits should carry on as it now is and any change to give five year work permits would need an amendment to the Employment Ordinance as I am sure the hon Gentleman sitting next to the Leader of the Opposition who then had ministerial responsibility for these things would know. There is no amendment before the House to the Employment Ordinance and therefore there is no intention at the moment to issue work permits for longer than a year, a year being the maximum that they are permitted to be issued under the Ordinance. What the Government have decided to do relates only to residence permits.

Mr Speaker, so as to how it will work in practice, the way that we expect it to work is as follows and that is that in the ordinary case people should get a residence permit for five years or such shorter period as takes them to pensionable age because once a non-EU national reaches pensionable age, if he has a residence permit for more than a year it has consequences in other areas which the Government do not intend and that therefore what we shall be doing is that we shall be giving Moroccans and other non-EU nationals, not just Moroccans, of a long term residence, how much is long term is a matter that has to be discussed but I would have thought that the figures that we are bandying about internally at the moment is certainly a minimum of 10 years, that they will obtain a residence permit of five years if that does not take them beyond retirement age, beyond pensionable age. If it does then it is for five years minus the period so it can be for four and a half years, for three and a half years, whatever the thing is. Once they reach pensionable age they will then go back to obtaining annual residence permits which of course still leaves retired Moroccans in a better position than they are today because today, once they reach pensionable age they only get, at best, quarterly permits, and sometimes even just leaves a waiver or things just to let them come and go. So even economically inactive Moroccans will be better off in the sense that they will have a one year residence permit.....

HON J J BOSSANO:

One year under the 1995 provisions, six months under this?

HON CHIEF MINISTER:

Yes, that is true. Mr Speaker, the hon Member is half right and necessarily not half right. In other words, he assumes that when one reaches pensionable age a Moroccan then does not have a work permit and there are many Moroccans of pensionable age who do continue to have work permits and they will continue to be able to have 12 months under this. The only people who under this will only be entitled to six months will be the Moroccans who reach pensionable age and do not have a work permit. The hon Member is correct only in respect of that more limited category. That is how the Government envisage it working. The hon Member said that there are principles that arise. I think there are principles that arise and I think there are principles which regrettably we need to have a degree of reluctance in debating openly in this House. Frankly, many of the people that I discussed this issue with, the Union and representatives of the Moroccans, understand that there are certain limitations affecting Gibraltar, resources, space even and that rights that they aspire to in larger countries with greater resources are simply impossible for us to deliver not because as a community we want to treat them worse than any other country treats them but because simply we are constrained by factors which are real and that they are outside our control. Therefore, within these parameters what the Government do is that through a process of continuing discussion we try to introduce layered improvements. In introducing any particular improvement one is not necessarily saying that this is what it should be in an ideal, Utopic or larger country but that in Gibraltar we have to tread carefully for reasons I am sure everybody in this House shares and that what the Government are trying to do is to make progress slowly in those areas where Gibraltar can afford progress to be made but continuing to realise the realities of our situation in areas where the reality of our situation is overriding or overwhelming. I do not know if those are the issues that the hon Member was trying to tease out when he said that there were important points of principles or just the ones that he referred to. Certainly those are the parameters that we operate under.

Question put. Agreed to.

HON CHIEF MINISTER:

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

Question put. Agreed to.

**THE SOCIAL SECURITY (INSURANCE) ORDINANCE (AMENDMENT) ORDINANCE 2000**

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Social Security (Insurance) Ordinance, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the object of this Bill is to give statutory effect to the measure that is contained in my Party's Election Manifesto and which I said at the Budget that we would be introducing this year to increase maternity grants and death grants to £350.

Mr Speaker, a maternity grant is a one-off payment currently made at the rate of £36 made to a woman for every child born to her. In order to qualify for this benefit a woman or her husband must have contributed under the Social Security (Insurance) Ordinance for a specified period of time. This Benefit is intended

to help with the cost of providing for the needs of a newborn baby. Mr Speaker, the present grant of £36 has not been increased since 1979 and is therefore currently inadequate for the purposes for which it was then intended when it was introduced. The Government wish to raise it to a more realistic level by increasing it to £350. Government also consider that there are people on high income who are not in need of this sort of financial assistance and we are therefore introducing not a means test but a limit with a view to benefiting most those with a joint income of £30,000 or less. As stated in the Bill the joint income means the joint assessable income of the parents of the child in respect of which a maternity grant is claimed. The means test will operate as follows:

Where the joint assessable income of the parents of the child is £30,000 or less they will obtain the full payment of £350. For every £1,000 of joint income in excess of £30,000 the rate of benefit will reduce by £35. This means that there will be no entitlement at all once the joint income reaches £40,000. It is reduced by 10 per cent for every £1,000 over £30,000 and therefore this is primarily a benefit for people on joint incomes of £30,000 or less with a tapering off provision for people on joint incomes between £30,000 and £40,000 so that the door does not slam shut and one ends up getting it all if one has a salary of £29,999 and nothing if one happens to have a salary of £30,100. Therefore, people get the whole of the £350 if they have joint incomes of less than £30,000 and reducing by £35 for every £1,000 that they earn in excess of £30,000 and by necessity that means that by the time one gets to a joint income of £40,000 one gets nothing.

Moving on to the Death Grant, Mr Speaker, this Bill also provides for an increase to the current rate of Death Grant which, as in the case of Maternity Grants, have not been increased since 1979. The Death Grant is a one-off payment intended to help with the cost of a family funeral. At present there are three rates of Death Grant which vary according to the age of the deceased. The rates are as follows:

£72 if the deceased was over the age of 18; £54 if the deceased was between the age of 5 and 18; and £36 if the deceased was under the age of 5. I do not know that that has anything to do with the fact that the cost of funerals vary depending on the age of the deceased. I have to say I cannot really think of why it should ever have been at a different rate. This Bill will replace those three different rates by a single, higher, rate of £350 irrespective of the age of the deceased. It will be paid to all claimants who satisfy the relevant contribution conditions. This substantial increase will narrow the gap between the present cost of a funeral and the level of financial assistance provided with Death Grants.

Mr Speaker, in the case of the Maternity Grant, the Government believe that resuscitating the grant and, in effect, bringing it up in value to inflation is justified because there is now a much larger incidence of home ownership amongst young married couples in Gibraltar and that there is now a coincidence between the time of one's life where one has the highest property costs, namely a recently married couple buying their first house, taking a mortgage on for the first time and it arrives at the same time as the increased costs of having children. For the first child one has to buy all the things that hopefully one can then use for all the other children. The idea is that this is a more realistic help for young parents at a time when they most need assistance given that they now increasingly take responsibility for their own housing costs. That is why the Government considered it appropriate to revisit the question of Maternity Grants at this stage. Similarly, the increase in the Death Grant should enable elderly people to feel that they have got to make that little bit less of provision for their own funeral arrangements and in the case of young people that have to bear the cost of the funerals for their elderly relatives that, again, at a time when they have got other calls on their disposable income, that it is appropriate to assist in this way. I commend the Bill to the House.

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

HON J J BOSSANO:

Mr Speaker, we support the higher rates of benefit. I think the argument that has just been put as to why in particular the Maternity Grant needs to reflect the circumstances of today where it is almost the norm rather than the exception that young newly married couples should seek home ownership at the time that they are starting a family makes sense. There is an important principle in this Bill which we reject totally and which has not been defended on the basis of the principle at stake. We have simply had an explanation of the mechanics of how the means test in the Maternity Grant is to work.

We believe that whilst it is normal and legitimate that social assistance benefits which are paid out of General Revenue should, if the judgement of the Government is such, be directed based on need, social security benefits which are purchased by the contributions of the person should not then be denied to a contributor on the basis that he does not need it when he becomes entitled to it. We think there is a fundamental principle at stake here which is important and which needs to be addressed. We disagree that somebody should find himself in a situation where he pays contributions in 1999 and then because of his earnings in the year 2000 does not get the same benefit as somebody else having paid the same contribution. This is not coming out of the Consolidated Fund, this is coming out of the Social Security Fund Short Term Benefits paid for by social insurance stamps. If we look at the situation created by Section 4 which, frankly, seems not to be very clear when it talks about the continuity of the law and it says "Section 10A (1A) of the Social Security Insurance Ordinance shall not apply to persons who are entitled to a Maternity Grant prior to the appointed day". Then it goes on to say ".....without prejudice to the foregoing provisions of this Section a person who is entitled to a Maternity Grant prior to the appointed date shall be entitled to the Maternity Grant as if Section 10 (1A) of the principal Ordinance had not been enacted". We do not understand what the relationship is between 4(1) and 4(2) given that it seems to be saying in the first one that it is not applicable to people who kept the Maternity Grant before the appointed day then why should it then go on to say that it is as if it had never been enacted, it is already covered by 10(1).

That in fact relates to what we consider to be another anomaly which is that the means test will apply from the date of commencement, as we read it, whereas the higher benefit will apply from the 10th February so we have effectively in the first year three sets of situation. We have got three people, all of whom have contributed to the Social Insurance Fund and who get a benefit of £35 before the 10th February. There are those who get a non-means tested benefit of £350 between 10th February and the appointed day and then after the appointed day we have the application of the new provisions which reduce the level of benefit after £30,000 and until £40,000. As far as we are concerned the benefit we believe should be from the 1st January because it is based on the contribution record ending in December. Therefore, benefits are altered on the 1st January because they are related to the number of stamps that people have paid the previous year. There seems no reason why somebody should have paid the same number of stamps in 1999 and get a lower benefit between 1st January and 10th February whereas somebody else gets a higher benefit from the 10th February. Somebody, for example, that only paid in the contribution year 13 stamps would find himself getting a Maternity Grant of £78, that is on 10th February. Somebody who had paid 52 stamps on the 9th February would get £35. I think that by introducing the benefit six weeks into the year one is creating a situation where the contribution record of the previous year which is supposed to trigger off the level of benefit one creates the anomaly that up to the 9th February somebody with 52 stamps in the previous year gets less than somebody from the 10th February with only 13 stamps. We believe that those areas should be corrected and that the Government, having taken the policy decision that this is going to be an appropriate level to pay the benefit, should make the benefit payable to everybody, should make it payable from the 1st January and at the end of the day it is not a question of the cost to the public purse because this is not coming out of the General Revenue of the Government and is not at the expense of some other deserving good cause. It is paid by

the people who are contributing to the scheme. Somebody may be in greater need and have not paid 13 stamps and gets nothing. The concept of making a benefit related to need is in fact negated even by maintaining the minimum contribution record of 13 stamps. Somebody who has been unemployed the previous year is the one who probably needs most the £350 and will not get it because he has not paid for three months. They may get credit but they do not get credit if they have been unemployed for the whole year Mr Speaker. If they get three months credit because they have been unemployed the most they would get would be the £78 and they would be the group that needs it most. I would say if the Government really want to make this benefit means tested they ought to consider really taking it out of the Social Security system and then paying it as Social Assistance and not relating it to contributions and paying it out of the General Revenue. We are in favour of what they are doing but we think that they ought to have a rethink on the application of it.

HON CHIEF MINISTER:

Mr Speaker, as the hon Member himself has pointed out all statutory benefits are linked to the recipient's contribution record. Therefore, the regressive characteristic that the hon Member has described applies to all such benefits. If an unemployed person does not have the contribution record he does not get his 13 weeks' unemployment benefit. His need for it is no less great than somebody who has got the proper contribution record and that would require what the hon Member is suggesting a fundamental rethink of Social Insurance legislation generally which cannot be done in the context of..... the hon Member is suggesting that any benefit that is delivered..... he is also making a separate point about whether people should be means tested at all given that it is statutory and not discretionary but in making that point the hon Member used the example of somebody not having the contribution that is required may need it more than somebody who has got the contribution qualification and that is the narrow point that I am addressing, that that is true of all statutory Social Security benefits and not just this one. Therefore, to correct that anomaly would require considering a wider consideration. The Government have given thought to decoupling this from contribution records at all altogether because our Manifesto commitment speaks of increasing the rates and people might have been led to believe..... people reading our Manifesto do not necessarily know the nitty gritty of what the qualification requirement is. Because people may have interpreted it to mean that this was going to be regardless of contribution record or anything like that we are studying the possibility of doing that but anything to do with altering Social Security and statutory benefits as the hon Member knows is something that we have to deal with carefully and we will get to that phase in slower order if our research shows that it can be safely done, decoupling it from contribution records without opening the floodgates for many others who might then become entitled to it. If we find it does not have that effect the Government will have no difficulty and will take that as a future phase.

HON J J BOSSANO:

I seem to have given the wrong impression. I certainly do not propose or suggest to the Government that they should think of making a Social Security Benefit not contribution-related. I think that would be a serious departure from established Social Insurance practice. What I am saying is if they want to make it related to need as opposed to contribution then in my view it should be Social Assistance. If they want to make it related to contribution then it should not be related to need. That is the view that we take and that is the view that we are putting.

HON CHIEF MINISTER:

I understand that Mr Speaker. The fact of the matter is that the regime currently exists within the statute and it would have required the repealing and the setting this up through the discretionary Social Assistance scheme. I am not sure that as a matter of principle I share the hon Member's distinction. All Social Assistance benefits ultimately come from money that is being paid by the taxpayer just as social security benefits come from a special fund into which is put money that also comes from the

taxpayer. The hon Member draws the distinction between statutory social security to which people had specifically contributed and social assistance to which they had not specifically contributed except in their capacity as a taxpayer. The principle of means testing social provision of this sort is not one that is new to the hon Member. He will recall that back in 1988 or 1989 he limited child allowance to a maximum income of £20,000..... Mr Speaker we are not talking here about technicalities we are talking about whether things are fair or unfair to people. The hon Member not only chose to limit child allowance through the income tax system to a household where no member earned more than £20,000. Mr Speaker, the hon Member may no longer remember and I will remind him of what he did. What he did was that he introduced a rule that said that child allowance was lost if there was an income in the family of one person of more than £20,000 which means that households where both parents were working, where they were both earning £19,999 so that the household income of the parents was £1 short of £20,000 they were getting it and if one had a household in which one person was earning £20,500 and the wife was either not working or earning less, that household did not get it because just one person was earning more in it where one of the parents was earning more than £20,000. Not only that, but the allowance was frozen at £20,000 from 1988 or 1989 and it never increased. So the hon Member was signalling not only that he wanted to limit this to households that had that income threshold but was also signalling that he wanted to phase out the allowance by not increasing it to keep up in value with inflation. We have extended the principle of means testing that the hon Member introduced but applying it, we believe, more fairly by setting the threshold at £30,000 which we have not plucked from the clouds. £30,000 is half way between the £20,000 at which point one lost it and the £39,999 at which level a household where both persons worked but both earning just less than £20,000 would retain it. Then we have allowed a tapering off from £30,000 down to £40,000 so that one gets part of it as one income exceeds £30,000 and approaches £40,000 and at joint £40,000 then one falls out of the system altogether. We believe that this is a fair means test. The hon Member I am sure did not mean to suggest that Social Insurance funds were not public funds. He also said that they were not Consolidated Funds, they remain public funds. We believe that public funds should not be used to deliver increased rates of benefits to people who do not need it financially. We believe in targeting even statutory social assistance. At this level where the benefit had fallen into disuse, obviously there are other statutory benefits which are of universal application and that will remain the same.

The hon Member spoke of Section 4(1) and (2) and wondered whether there was not some inconsistency there. Mr Speaker, with the greatest of respect to him I do not think that there is. What Section 4(1) says is that this Bill and the section that it adds, the principal Ordinance, shall not apply to persons who are entitled to a Maternity Grant prior to the appointed day. In other words not only do they not have a right to receive the grant at the new rate but that they cannot be deprived of it by virtue of the means test that is now introduced. It is intended to preserve the old right at the old rate for people who have already earned it before this legislation comes into force. Sub-section (2) simply says that one gets it at the old rate. Sub-section (1) says that this Bill and its introduction of a means test cannot deprive of the benefit somebody who had already earned it before this Bill and sub-section (2) says that a person gets it as if this had not been passed, at the old rate. I do not believe somebody who had already acquired an entitlement to it under the old law gets it at the old rate. I do not believe that there is that distinction between us. I thought the hon Member was going to make a slightly different point but I would have agreed with him, I have questioned now as I have read this again today whether there is actually a need for a definition of an appointed day, given that the legislation itself says that it shall be deemed to have come into force on the 10th February 2000. Therefore, it seems that the legislation is already appointing the day and the reason for that is that that is the date when we published our Manifesto commitment to do these two things and that was simply the date that we chose. I therefore think, having heard the hon Gentleman, and he now having heard me, that the only difference between us on this issue is whether statutory benefits as opposed

to social benefits should be delivered at different rates to different people depending on their means. The position is that the Government policy is that that should not be the case in relation to other benefits but this benefit which the Government have resuscitated and which the Government have brought back into force should not be delivered at a higher rate and simply to say "I do not object to the principle of people not being paid this if they earned too much money, so long as you take it out of Social Security" is a bit technical Mr Speaker. All it means is that we would repeal this Section in the principal Ordinance and establish the regime under a discretionary system where people do not have the statutory right to receive. If we did that we would simply be swapping this which gives people a statutory right not subject to administrative discretion and we would be swapping that for the present system of Social Assistance which means that people go to the counter and they will never know whether they have it. They certainly do not have it as a matter of right and whilst we acknowledge and continued the hon Members' system in that respect because we acknowledge why it has been done and the wisdom of it and therefore we have continued it we do not want to add things unnecessarily to it. The principle, as far as we are concerned is, is it right that people should only get a benefit from public funds if they need it, or which is the case with Social Assistance, should there be a means testing of such benefit or not? If we agree that it is okay that there should be then whether it is parked under Social Security or whether it is parked under Social Assistance simply raises the rather technical question of whether the answer is different depending on whether one is using general Government funds from the Consolidated Fund or whether the answer should be different because Short Term Social Security payments are paid out of the Short Term Social Security Fund to which everyone has contributed in equal measure. There may be arguments of that sort but they are technical arguments and do not go to the question of whether means testing in a particular benefit is socially fair or not. I am quite happy to give way if the hon Member wants to come back on that.

HON J J BOSSANO:

Mr Speaker, the Government have said that it is doing it in respect of this benefit and is not going to do it in respect of any other benefit. This is the first time it has ever been done. There has always been a very clear dividing line between the two and therefore doing it for the first time in this benefit is something that ought not to be done lightly. I really ask the Government to consider the very principle that people are taking out insurance, they are paying a premium, in this respect to a Government insurance fund which is not Government money. It may be public funds in the wider sense of the word but it is the money of the contributor and the Government are saying to somebody ".....if you contribute so many stamps in 1999 you will get this benefit in the year 2000". That is what the Bill does. If one gets one level of benefit at one time, and a different level of benefit at another time and it depends on ones income in the year 2000 notwithstanding the fact that one may have paid more or less in the previous year I would urge the Government to consider there is really a fundamental conflict of approach in the two systems where one is the general body of taxpayers contribute to general taxation in relation to their means and the poorer sections of the community who may not contribute at all get the benefit. The concept of assistance and general taxation is transfer of income from those who are better off to those who are worse off. The concept of social security is that there is an insurance fund which is state controlled but might be equally private to which irrespective of how well off one is one makes contributions and one gets a benefit and it does in our view raise very serious and important principles which are being tested for the first time. Perhaps unintentionally but that is how we see it and that is the reservations we have about this. We are saying "if you want means testing then you have to take the other route" but one should not take this route. Alternatively do not means test it because at the end of the day everybody has paid the same. Why should not everybody get paid the same back?

HON CHIEF MINISTER:

Mr Speaker I think as a matter of principle we should not discontinue the House simply because the Gibraltar Taxi Association do not want to give the Leader of the Opposition the opportunity to speak in Parliament. I think that this is a reason for continuing and not a reason for stopping. I very much regret that the Gibraltar Taxi Association should wish to interfere with the Leader of the Opposition's right or any other Member's right in this House to speak.

Mr Speaker, laws in Gibraltar are made by the legislature or by the persons authorised by the legislature in case of subsidiary legislation. Laws are not made in Gibraltar by anybody else and the legislature is not to be obliged by any particular sector in this community as to what laws it can make and what laws it cannot. Therefore, demonstrations of this sort rather tend to confuse the issue.

Mr Speaker, the hon Member says that there is a great principle at issue here. I can undertake to give some thought to the questions that the hon Member has raised but I do not think that those issues are raised. I am sure that the issue of Family Allowance was statutory.

HON J J BOSSANO:

Family Allowances was never contribution-related Mr Speaker. It was a statutory benefit as elderly persons' pensions were a statutory benefit and we all know what happened post-1986 to require us to make social assistance an administrative system but it was never a question that one got Family Allowances depending on the number of insurance contributions that one had paid.

HON CHIEF MINISTER:

Mr Speaker, be that as it may, what the hon Member has said raises unintended issues of principle, I do not think that it does but we will consider it. All that this does is continue to the extent that it continues to be contributions based. That simply continues the system that we have always had albeit delivering the benefit itself at a higher rate. It is not that we are introducing a system of contributions-related Maternity Grant or Death Grant. The Death Grant and the Maternity Grant have been contributions-related since the 1950s. All we are introducing is the concept of a cap at the top beyond which income one does not get it at all. That is slightly different is it not to the question of whether it is contribution-related. The issue that the hon Member therefore raises is whether benefits that are statutory and paid not out of general taxation but out of social insurance contributions should be means tested or whether they should be universally delivered at a given rate. That is a slightly different point which does not arise from the fact that the qualification depends on whether one has a minimum number of contributions in any given year but from the fact that the pot of money from which it is paid is the fruit of people's insurance contributions. That is the point, rather than any qualification that arises from whether one has enough contributions which has always been the case.

HON J J BOSSANO:

Certainly we are not seeking to change the relationship. What I am saying is that if one has the two systems operating side by side one does create a situation in the first year where people who contributed more may finish up getting less than people who contributed less. That was never intended. The reason why the system provides that benefits go up on the 1st January is because the relevant contribution year is the year ending 31st December. If one has a relevant contribution year that still keeps the same dates but one alters the dates of the benefits then one has a position where somebody may have paid more stamps in 1999 and be getting a lower benefit quite independent of the point about income because the other point I was making was the one about the date. If I have paid 52 stamps or somebody has paid 52 stamps last year and is paid at the old rate before the appointed day he gets £35. Notwithstanding the fact that he has paid 52 stamps in the relevant contribution year. On the other

hand, somebody that has a child one day later, 10th February as opposed to the 9th, will have paid 13 stamps in the relevant contribution year and gets £78. Therefore, although the Chief Minister is right to say the system of relating the benefit to the number of contributions has always been there, the point that I am making is that the change in the date of the benefit whilst maintaining the date of the contribution record makes the principle work in a way that was never intended.

HON CHIEF MINISTER:

That might be true of the first year and of course the hon Member is assuming that the relevant period will be the 13 weeks before 1st January.

HON J J BOSSANO:

But in the provisions in the Bill, Mr Speaker, there is no reference to changing the relevant contribution year from what it is already in the law.

Since that is not being changed then that is where the analysis that I have made follows. Can I just make reference also to what the Chief Minister said about the appointed day in Section 4, we assumed that there was going to be introduced from our reading of this section a situation where the appointed day could be something other than the 10th February and that therefore, the provisions here were referring to people being paid, as we read it, if the appointed day came after 10th February, people being paid the new rate not means-tested for a period between 10th February and the appointed day.

HON CHIEF MINISTER:

There are not three categories, the new rates and the new rules apply to anyone who dies or was born on or after 10th February. There are two categories, births and deaths before 10th February and births and deaths on the 10th February and after. There has to be a date. The hon Member is suggesting 1st January for other reasons but whenever one increases a benefit retrospectively one has to choose some date in the past. The reason why we have not wanted to make it the current date is that having made this announcement that people should not be prejudiced by the length of time that it takes the Government to have a piece of legislation drafted and brought to the House. The 10th February is a fair date for everybody because it is the date on which we first announced this policy. That is the only reason why 10th February was announced.

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 Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon R R Rhoda
The Hon T J Bristow

Abstained: The Hon J L Baldachino
The Hon J J Bossano
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon J C Perez
The Hon Dr R G Valarino

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

The House recessed at 1.20 pm.

The House resumed at 3.10 pm.

**THE CRIMINAL PROCEDURE (COMMUNITY SERVICE ORDERS) ORDINANCE 2000**

SECOND READING

HON MRS Y DEL AGUA:

I have the honour to move that the Bill be now read a second time. Mr Speaker a Community Service Order is basically an alternative to sending an offender to prison. Its introduction broadens the sentencing options available to the Courts and releases the demand on the Prison Service. Instead of spending time unproductively in prison with the cost of that time falling on the taxpayer, an offender may be required to work for the benefit of the community, for example, undertaking outdoor conservation projects, painting and decorating for the elderly, helping a voluntary organisation or any other task which may be defined as appropriate. The benefits of the Order are therefore both financial and beneficial to the community as a whole. There are some important points to note. Firstly, the Order only applies in relation to offences punishable by imprisonment. Secondly, the offender must consent to the Order being made. It cannot be enforced on someone who does not wish to work. Thirdly, the work must be available. Finally, the Court may review the Order and if it is not properly or fully complied with the Court may sentence the offender for the original offence as if he or she had just been convicted. A Community Service Order is not a method of providing cheap labour for specific projects. It is a method of punishment by which the offender puts something back into the community by carrying out work which might otherwise not be done. The work will always be undertaken under the supervision of an officer of the Social Services Agency. The availability of Community Service Orders in the UK has been a successful use of this punishment for many years. It is time for us in Gibraltar to move forward with this change in the sentencing powers of the Court for the benefit of all. I commend the Bill to the House.

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

HON J L BALDACHINO:

We shall be voting in favour of the Bill but not for the reasons that the Minister has just explained, not for the reasons that it would stop being a demand on the Prison Services neither would it be because of the financial reasons involved. We believe that rather than sending people to prison for having committed an offence, society could find an alternative solution to that which the Bill provides for that if the person is willing to accept that, that people should be given a second opportunity to be incorporated back into society rather than condemn them because some times people do make mistakes in life and therefore rather than condemn them to prison I think that this gives them a better opportunity to amend their ways to be integrated back into society. If such a thing can be achieved by legislating in this way, Mr Speaker, I think it would be a benefit for the whole of society. I understand that this has been the practice in other countries, specially in western European countries, especially in the United Kingdom and has met much success. Therefore, we expect that the same success that has happened in the United Kingdom can apply here. Mr Speaker, we will be monitoring the situation once the Bill is passed to see if the positive results in other countries will happen here and we are supporting the Bill on that basis.

Question put. Agreed to

The Bill was read a second time.

HON MRS Y DEL AGUA:

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

Question put. Agreed to.

**THE TELECOMMUNICATIONS ORDINANCE 2000.**

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to provide for the assignment or conferring of functions to a Minister and to the Gibraltar Regulatory Authority; to make new provision with respect to the provision of telecommunications services and the establishment or operation or both of telecommunications networks; to make provision, in substitution for Part II of the Public Utility Undertakings Ordinance and for the Wireless Telegraphy Ordinance, for the matters there dealt with and related matters; to transpose and to make provision for the transposition of Council Directive 90/387/EEC as amended by Directive 97/51/EC of the European Parliament and of the Council, Commission Directive 90/388/EEC as amended by Commission Directives 94/46/EC, 95/51/EC, 96/2/EC and 96/19/EC, Council Directive 92/44/EEC as amended by Directive 97/51/EC of the European Parliament and of the Council and Commission Decision 98/80/EC, Directive 97/13/EC of the European Parliament and of the Council Directive, Directive 97/33/EC of the European Parliament and of the Council as amended by Directive 98/61/EC of the European Parliament and of the Council, Directive 98/10/EC of the European Parliament and of the Council and Decision No.128/1999/EC of the European Parliament and of the Council; and for connected purposes, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill, as the Long Title makes clear, is mainly concerned with creating the framework for the implementation in Gibraltar of the European Union Directives relating to Telecommunications Liberalisation. Those directives provide for the opening up of the market in telecommunications so that there is no monopoly in the provision of services or networks. The Bill provides a new framework for the provision of telecommunications services and the operating and establishing of networks in Gibraltar. It repeals and replaces the Wireless Telegraphy Ordinance and part of the Public Utility Undertakings Ordinance which at present deal with such provision, operation and establishment. The Bill is an enabling piece of legislation for the liberalisation of telecommunications network and services and as such will have to be read together with several Regulations which will be made under the Ordinance. The Bill transposes into Gibraltar law, when read with those Regulations, the relevant telecommunications related to the directives, a total of 12 directives and two Council Decisions. Part I of the Bill contains the interpretation provisions. Part II section 3 provides the basic powers and duties of the Minister and the Gibraltar Regulatory Authority in relation to the new regime. In particular it should be noted that section 6 gives the Minister and the Regulatory Authority powers in that criminal offences are potentially committed if information that is properly required in respect of matters relating to the Ordinance is not provided. Part III taken together with Regulations to be made under Part III implement the various directives themselves. Part III is divided into six areas. The first area deals with open network provision, from section 11 to section 14 and the second area dealing with competition and licensing in sections 15 and 16 form, in effect, the backbone of the framework for the transposition of the meat of the directives and contain quite detailed regulation-making powers such as are required to actually implement the directives. The directives' relevant sections and regulations work as follows:

Directive 90/387 on the establishment of the internal market for telecommunications services through the implementation of open network provision as amended by directive 97/51 will be transposed..... and that one relates to an adaptation of the competitive environment in telecommunications, those will be transposed to section 11 of the Bill and the proposed

telecommunications open framework Regulations. Those, together, will deal with transposing the directive which ensures that subject as contained in the directive, that there is open and efficient access to and use of public telecommunications networks and, where applicable, publicly available telecommunications services. Access to and use of public telecommunications networks and, where applicable, publicly available telecommunications services will be covered by the Telecommunications (Open Network Provision Framework) Regulations (ONP for short), which will be made under section 11 of the Bill.

Directive 90/388 relates to competition in the market for telecommunications services as amended by directive 94/46 on satellite communications relating to the use of cable television networks, directive 96/2 on mobile and personal communications and directive 96/19 on full competition on telecommunications markets. All of that will be transposed through section 16 of the Bill under which it is proposed to make the Telecommunications (Competition) Regulations. Those Regulations will implement the directives that require, that subject as contained in those directives that there be fair and effective competition between persons engaged in commercial operation of telecommunications networks or the commercial provision of telecommunications services or both. Just to summarise what we have got so far, I have covered the area of the framework legislation that will deal with use of and access to networks and services and, secondly, competition in the provision of networks and services. Thirdly, directive 92/44 on the application of open network provision to release lines as amended by 97/51 and also as amended by Commission Decision 98/80 on what constitutes a minimum set of leased lines will be transposed to section 12 of the Bill and the proposed Telecommunications (Leased Lines) Regulations. These directives and the Decision are meant to ensure that certain types of entities grant to users on public telecommunications networks access to and use of certain types of leased lines. That there is available a minimum set of leased lines having certain characteristics and that there is at least one entity with the obligation to provide leased lines. hon Members may be aware that leased lines is the provision of some capacity that does not require the user engagement of a public switch system, the public exchange system. That is the third area that needs to be covered, leased lines, access to leased lines and the terms upon which leased lines are to be made available. Fourthly, directive 97/13 on a common framework for general authorisation and individual licences in the field of telecommunication services will be transposed to section 16 of the Bill and the proposed Telecommunications Licensing Regulations. The Regulations will transpose the Directive which introduces a framework for the establishing of a licensing regime which will apply to all who wish to establish or operate or both, because one can either be one or the other, or both, a provider of the network or a provider of a service on the network, or both, a telecommunications network within Gibraltar, and to all who wish to provide a telecommunications services in, from within or through Gibraltar. Therefore, that is a further leg of the market regime. We have now covered use and access to the network and the services. We have covered competition, leased lines and now the licensing regime is a further limb of the liberalisation of the marketplace as a whole. Fifthly, directive 97/33 on interconnection in telecommunications with regard to ensuring universal service and interoperability through the application of the principles of open network provision as amended by directive 98/61 on operator number portability and carrier pre-selection, all will be transposed to section 30 of this Bill and the powers that it will give to make regulations that will be called the Telecommunications (Interconnection) Regulations. These are designed to ensure that Member States establish in their territory a regulatory framework for securing the interconnection of telecommunications networks between each other and the interoperability of telecommunications services and the provision of universal services, that is to say a minimum standard service which is accessible to everybody in a competitive environment. Directive 98/10 on the application of open network provision to voice telephony and on universal service for telecommunications in a competitive environment will be transposed to section 14 of the Bill and the proposed Telecommunications (Open Network Provision) (Voice Telephony) Regulations. This directive is

designed to ensure subject as contained in it that there is open and efficient access to and use of fixed public telephone networks and fixed publicly available telephone services and that fixed public telephone services of good quality are available say in so far as the availability thereof is not reasonably practicable.

Mr Speaker, the third area and it is a general area covered by sections 17 and 18 is also by and large Regulation-making and provides for the establishment of the telecommunications code by regulation. The relevant regulation is the proposed Telecommunications Code Regulations. This code sets out the powers which certain telecommunications operators authorised to use the code by the Minister possess or will possess in order to install the apparatus necessary to establish and run their telecommunications networks. The fourth area covered in the Bill relates to acquisition of land and related issues and that is dealt with in sections 19 and 20 and they deal, amongst other things, with compulsory purchase of land and compulsory right of entry on to land for exploratory purposes in relation to the provision of telecommunications networks and they cover the same sort of issues that are presently covered in some of our own domestic legislation.

The fifth area relates to offences and it creates specific offences as required under the directives and the sixth area deals with telecommunications apparatus and that is in section 26 of the Bill. It is also regulation making in the main. It empowers the Authority to prohibit the connection to networks of certain apparatus and provides for the establishment of an approvals regime for telecommunications apparatus before it can be connected to the network.

Part IV of the Bill replaces and updates what used to be the Wireless Telegraphy Ordinance.

Part V contains miscellaneous and supplemental provisions and these sections which number between 45 and 47 deal with land related issues and the making of regulations generally and the supplemental sections 48 to 53 which deal with general restrictions on disclosure of information, section 48 offences, sections 49 and 50 Summary Proceedings and section 51 Amendments, Transitional Provisions and Repeal of previous legislation in section 52 and the applicability of the Bill to the Crown in section 53. There are two Schedules to the Bill. The first deals with general transitional provisions and savings and is mainly designed to deal with licences which are currently in existence. The second deals with repeals of existing legislation.

Mr Speaker, once the Bill is enacted and all the Regulations are passed, organisations wanting to provide telecommunications networks and/or services will be able to apply for licences. The exclusivity enjoyed by both Gibraltar Nynex Communications and GibTel will therefore be abolished and these companies will be granted new operating licences under the Telecommunications Ordinance. Hon Members will see that the First Schedule deals with how that happens immediately by the agreement which is presently in place, the current licence agreement becomes immediately and at least temporarily but certainly immediately a licence issued under this agreement to be read in a manner consistently with this legislation to the extent that it might be inconsistent with it. That is the existing licence agreement.

Mr Speaker, although this Bill is the enabling legislation for the liberalisation of telecommunications network and services in Gibraltar, much liberalisation will be dependent on the availability of telephone numbers which are the raw material for many telecommunications services. If Gibraltar has no numbers it cannot liberalise the provision of certain services and applicants for number-dependent services will necessarily have practical difficulty in obtaining such a licence. To this end an amendment that I shall be moving to the provisions of section 15, and I will explain to the hon Members in a moment why section 15, read with the Regulations that will be made under section 16 will temporarily qualify the impact of this legislation. It is not appropriate, desirable or even possible for this House to impose upon the Minister for Telecommunications or on the independent regulatory Authority with an obligation as section 15 as it currently stands says, with our unqualified obligation it says "the Minister

and the Authority shall each have a duty to ensure that in Gibraltar fair and effective competition between persons engaged..... is established and maintained". In the Regulations which will be made under section 15 it will make it perfectly clear that neither the Minister nor the Authority can possibly ensure competition if there are no numbers to give to the competitors. Therefore, whereas this House transposes this legislation, the Government believe it is inappropriate that we should transpose legislation which imposes either on one of our Ministers or on a statutory regulatory Authority a statutory obligation which through no fault of our own is physically impossible to comply with. Therefore, I shall be moving an amendment which will introduce after the word "that" in the second line the words "subject to such regulations as may be made under this Ordinance". It will read "The Minister and the Authority shall each have a duty to ensure that subject to such regulations as may be made under this Ordinance in Gibraltar fair and effective competition between persons engaged.....". The Regulation will then say that those obligations and duties to establish and see that competition is maintained is subject to a resolution of the number of problems because otherwise what we have is a position where the Minister and the Authority are immediately in breach of their statutory duty yet the remedy of that is outside of their control. These are issues that needless to say we have brought and will continue to bring to the attention of the Commission so that they understand the extent to which any failure on their part to take rapid action in this matter will be tantamount to one Member State preventing another Member State from complying with the latter's obligations under a Community Directive, we having done all that we possibly can do by legislating in terms which says "this is the law of the land subject only to it being physically possible to do so and it is Spain that is preventing that physical possibility of doing it". It will leave no further hiding places and it will ensure that Spain can no longer attempt to defend itself, not that there is in my opinion any great subjective or objective merits to the defence but they should not continue to be able to raise red herrings by saying to the Commission in response to pressure from the Gibraltar Government and in response to pressure from the British Government "but how can Gibraltar complain about the non compliance by us of European Union Directives which they themselves have not yet transposed into their laws?". Once we do this we will have transposed them into our laws and Spain's behaviour will be the sole obstacle to the compliance by Gibraltar with its obligations under these directives and Spain's behaviour is the one that will then be preventing Community law from being applied in this corner of the European Community.

Mr Speaker, one final point. The distribution of powers between the Minister and the Authority follows very closely upon the United Kingdom model. Powers which the directive allows to be exercised by the Member State are exercised in this Bill by the Minister. Powers which under the directive are required to be exercised by the regulatory Authority are given in this Bill to the regulatory Authority and that is as has been done in most Community countries but certainly the way that it has been done in the United Kingdom. The directives themselves tell which of the various powers to administer this liberalised market can be retained by the Government of the Member State and which have got to be exercised by an independent regulator at arm's length. We have followed exactly that division of responsibilities. I commend the Bill to the House.

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

HON J C PEREZ:

Mr Speaker, the Chief Minister is right in saying that one cannot judge how fully the EU Directives mentioned in the Bill have been applied without having access to see what the Regulations say because the structure of the Bill provides for those directives to be applied fully but one cannot judge whether we are complying with the directives until the Regulations have been published and the Regulations have not been published and have not been made available to the Opposition. Be that as it may we have gone through the provisions of this Bill as thoroughly as is possible in the month or so in which we have had it in our possession. This Bill contains highly complex technical issues and has taken the Government five years to put together. The Opposition shall be

making several points at this stage but would ask the Government not to take the Committee Stage and Third Reading immediately and would also request that we should be able to meet with the Law Draftsman or whoever the Chief Minister directs in order to have some of the more complex technical issues clarified to us before taking the Third Reading of the Bill.

Mr Speaker, on the last point mentioned by the Chief Minister, I think he is wrong in one respect but I know that in some Community countries this is not the case but he says that in the UK it is. We cannot see why the Minister should have powers and responsibility over both licensing and regulation and relegate the Authority to be the watchdog of the licencees. As the Bill is now, the power to grant licences lies with the Minister who quite rightly is responsible for the making of Regulations with the Authority overseeing those licences and making sure that the holders of those licences are in adherence with the provisions of this Bill under regulations made by the Minister. We believe that for the Authority to be seen to be independent that the Authority should be the body responsible for licensing with the Minister setting out the standards and criteria under which licences are granted. This would, in our view, comply with the requirements set out by the European Union for the establishment of independent regulatory authorities more fully particularly where the Government are a shareholder of two companies providing telecommunications services to the general public. I say this, Mr Speaker, because the European Commission has already made clear that the mere administrative or legal separation between the functions of those providing telecommunications and those responsible for the Authority does not constitute compliance with the requirements even if we here in this House might not find that to be the most desirable situation. Some Member States of the EU have already been taken to task by the Commission over this matter having received complaints to that effect. There is presently a case pending over the procedures prevalent in Belgium related to the fact that a Government Minister there is involved in the issuing of licences whilst the Government are a shareholder of what used to be the public service provider, now a private company. Independent of this point, which I think is important to take into account, we believe there is no need whatsoever to involve a Government Minister in the consideration of applications and issuing of commercial licences to provide telecommunication services and that that function would be more properly undertaken by the independent Authority who could only take decisions based on the parameters and criteria set out by the Minister. The check of the Authority would obviously be the appeals procedures to the Courts set out in the Bill. We also believe, Mr Speaker, that matters are made worse by the fact that under the other Bill discussed this morning the Chief Executive of the Authority is appointed by the Chief Minister. The Chief Minister is wrong in thinking that departments cannot carry out the functions of the regulatory authorities. In many instances the Department of Trade and Industry and other EU jurisdictions carry out that function and this is carried out by civil servants. The arm's length relationship and the independence sought by the Commission is more one where those involved in licensing other companies should not have or be seen to have conflicting interests in having some share or control in other telecommunication providers. I submit to this House that both the Chief Minister and the Minister referred to in this Bill are in the collective responsibility role the custodians of the public shareholding in GibTel and Nynex and that it would be better that they should not be involved either in licensing or in the appointment of the Chief Executive of the Authority.

I would now like to move, Mr Speaker, to Part IV of the Bill which according to the Explanatory Memorandum incorporates and updates the existing Wireless and Telegraphy Ordinance. There, in section 27(1) we are being given an interpretation of what telecommunication equipment means in respect of that section only. Under the existing Wireless and Telegraphy Ordinance such a definition exists but is referred to as "Telecommunications Apparatus". In this Bill, since telecommunications apparatus is defined differently in section 2 it is now called "equipment in respect of section 4 only".

Part IV of the Bill repeats the provisions already in existence in the Wireless and Telegraphy Ordinance for the licensing of

telecommunications equipment, the maintenance by dealers of a register of such equipment and the licensing to import such equipment into Gibraltar.

Section 27 states that telecommunications equipment shall be construed as references to stations and equipment for the emitting or receiving of electromagnetic energy. These provisions already exist but, to my knowledge, are not being observed by all people dealing with such equipment given the description of what telecommunications equipment is. I think if we are updating the Ordinance we need to check this, Mr Speaker. For example, a satellite dish falls into that category. We believe a mobile telephone falls into the description given of telecommunications equipment. Is it that the Government continue to want, given that it was in the old Bill, to ask dealers involved in mobile telephones and satellite dishes to keep such registers and have such import licences as defined in the Bill? Or is it that the definition in the Bill has not been updated, is too wide and covers more than ought to be covered by these provisions? Since these provisions exist in law, Mr Speaker, may I ask whether the Government can find out before the Committee Stage how many dealers there are dealing with such equipment as defined by the Wireless Telegraphy Ordinance? What records are kept by dealers? And who checks them? Is it that there is provision in the existing Ordinance that we are to replace which has not yet come into effect?

If one turns to sections 36 to 38 covering the licensing of dealers of telecommunications equipment, Mr Speaker, and reads this together with the interpretation of what constitutes telecommunication equipment, then the existing provisions on the new ones both seem to suggest that a person selling a mobile telephone or a satellite dish has to comply with the requirements set out in these sections, must be licensed to sell such equipment, keep records of imports and sales with names and addresses of customers et cetera. Section 39 is even worse, given that de facto if this interpretation is as wide as we think it is, it would not permit anyone to import a mobile telephone without a licence to keep or establish such equipment, something which is inapplicable if it is related to a mobile telephone that comes across the frontier in someone's pocket.

Mr Speaker, there is no definition in the Bill as to what is meant by the electromagnetic spectrum. I know that in the recent case brought by Gibnet, the argument was used that the electromagnetic spectrum includes "light" and that therefore such a description unaccompanied by a more precise definition could be construed as Government purporting to licence and regulate light. Having read the remarks of the Judge in my opinion he avoided having to give an opinion on that specific matter. Nevertheless, Mr Speaker, if we are indeed updating a Bill and such a point has been made I think it is our duty to check this point before we proceed with the Bill. I do not know whether such a definition is used as loosely in the UK or in other English-speaking jurisdictions in the EU, namely Ireland, but it would be interesting to find out and compare.

We now come to the provisions which exist in the Wireless and Telegraphy Ordinance over misleading messages and interception and disclosure of messages. Mr Speaker, what was introduced by the Hon Mr Peter Montegriffo in December 1997 protects the public from those who might use telecommunications equipment to obtain information as to the contents of messages between two parties or disclose such information so obtained. This only covers Part IV of the Bill which covers what is today Wireless and Telegraphy. There are provisions in Part III of the Bill setting out offences for such interference by persons engaged in operating a public telecommunications network. These provisions are those which exist today in the Public Utilities Undertaking Ordinance. The first point I would like to make is that I think that without intention as a consequence of the powers given to the Minister in the Ordinance we have substituted in these provisions the Wireless Officer for the Minister and we have a situation where the Bill now reads ".....otherwise than under the authority of the Minister", I am looking at the old Bill which is what the same Bill has. But in section 41, page 216, the old Bill says ".....any person who otherwise than under the authority of the Wireless Officer or in the course of his duties as an officer of

the Crown....." and then sets out what that person ought not to do other than with the authority of the Wireless Officer. Here, as a result of the separation of powers between the Minister and the Wireless Officer, I think that having given powers to an active politician, a Minister, for him to exclude, for whatever reason, any party from the provisions of this Bill, is something which is incorrect and I think ought to be changed and ought to read "the regulatory Authority" instead of "the Minister".

The other point is that the provisions in Part III only apply to persons operating a public telecommunications network in a situation where we are opening that network to others, through a licensing and regulatory mechanism, and that the employees of those other future operators should also be covered by these provisions and I think they are not being covered by these provisions. Only the operators of the public telecommunications network are covered by these provisions with no cover made for other employees of other companies that might have access to the network. The third point, Mr Speaker, is really whether the provisions in Parts III and IV taken together go far enough in protecting the public, that is, the user of the telecommunications network from interception and disclosure of conversations or messages. There are two EU Directives relating to the free movement of data mentioned by the Chief Minister this morning but which also covers, in particular, the right to piracy of such data which will need to be applied in Gibraltar too, they are Directive 95/46EC and Directive 97/66EC. Article 5 of that Directive, which is an update of the previous one, states ".....Member States shall ensure by our national regulations the confidentiality of communications by means of a public telecommunications network and publicly available telecommunication services. In particular they shall prohibit listening, tapping, storing or other kinds of interception or surveillance of communications by others than users without the consent of the users except when legally authorised".

Mr Speaker, it would be a shame at this stage when we are introducing a totally new Bill with new concepts for the provision, licensing and regulation of our telecommunications, that we should not use this opportunity to be as clear and categorical as the EU directs us to be in protecting the public from unscrupulous elements in our society who would interfere in the private affairs of the users of the telecommunications service. I do not think that the provisions contained in the Ordinance cover fully these directives and I think we should use this opportunity to do so now at this stage.

Mr Speaker, I now turn to section 43 which deals with the provisions for emergencies as it relates to Part IV of the Bill. This is not a new subject. When the Hon Mr Montegriffo introduced this clause in December 1997 in the Wireless and Telegraphy Ordinance we said that we would abstain over this clause because we were unsure of its constitutionality. This is the part for emergencies which is Clause 43. This led to accusations from Government Members about us wanting to protect the powers of the Governor and inevitably the Chief Minister gave us a lecture on constitutionality and so on which he often repeats to try and defend his position. Mr Speaker, the clause states that if at any time in the opinion of the Minister an emergency has arisen in which it is expedient that the Government should have control over the transmission and reception of messages by telecommunications the Minister may, during the continuance of such emergency make such orders as appear desirable with respect to the possession, sale, purchase, construction and use of telecommunications equipment in Gibraltar or on board any ship whilst in the territorial waters thereof. The fact that the Governor was substituted by the Minister is not the issue here. The control of the telecommunications by the Government is not the issue here if such an emergency arose. What we object to is that what constitutes an emergency is left to the sole judgement of one person, that person being the Minister. We do not believe this to be right. If previous to 1997 that person alone was the Governor, it was wrong then but if we are going to progress from the position of the Governor alone in his wisdom, judging what constitutes an emergency, it is not by transferring that absolute right to the discretion of opinion of one Minister regardless of who he is without the necessary checks that must go hand in hand with any constitutional change as the Chief Minister used to

repeat parrot fashion when he sat on this side of the House. If it was wrong before for the appointed Governor to be the sole arbiter of what constitutes an emergency, it is equally wrong today that the Hon Mr Azopardi, or whoever comes after him, should be the sole arbiter of what constitutes an emergency particularly in respect of such an important matter as the Government having to decide to take steps to have control of the transmission of messages through telecommunications. If that emergency arose then the Government have the right to take the steps necessary, that is not in question. What is in question is that the person who decides what constitutes an emergency and for how long that emergency is in operation is one person, be that one Minister or whatever. We are not, as the Chief Minister suggested in December 1997, protecting the rights and powers of His Excellency the Governor in this respect. We are aiming to protect the public from granting excessive, unchecked and absolute powers to one Minister in an area as important and delicate as this one.

Finally, Mr Speaker, there are other issues of less significance which we would like to raise such as the reasoning for the Authority to be able to modify or withdraw schemes for subscribers, why the Minister has to make assessments about whether certain services are affordable in a free market environment, the intention of Government with respect to commencement dates of parts of the Ordinance and the relevance this might have with the blocking by Spain of our numbering plan when the Chief Minister has already mentioned that he is going to bring an amendment to that effect. Perhaps it is not connected with the commencement date of each part of the Ordinance. I submit to the House that the Government might wish to think and consider some of the points that have been raised in what I guarantee to Government Members is a constructive analysis of the Bill. The Bill is complex and instead of wasting more of the House's time it might be better if the Government agree if we could clear some of these issues with the Law Draftsman or whoever the Chief Minister might direct before taking the Committee Stage to see whether they are mere matters of interpretation or more substantive matters of policy. Thank you, Mr Speaker.

HON J J BOSSANO:

Mr Speaker, although the mover has concentrated predominantly on what the Bill is intended to do to create what he described as the framework within which a subsidiary Regulation would give effect to Community obligations in the directives mentioned in the Explanatory Memorandum, as the Explanatory Memorandum indicates the Bill does two other things so it is really as if it were three different Bills rolled into one. In looking not at the EEC dimension but at the dimension on existing legislation, the replacement of Part II of the Public Utilities Ordinance which deals with the telephone service and the replacement of the Wireless Telegraphy Ordinance is done in a way that is similar for example to what we saw happening this morning in the Income Tax Ordinance where in one case we had a couple of words being changed but the existing clause is repealed and the clause incorporating the thing being reworded is put in its place. For us to be able to assess whether in what is described in the Explanatory Memorandum as the re-enactment and updating of the Wireless Telegraphy Ordinance, what is being done to the existing Ordinance can be considered to be updating, that is to say bringing it up to the year 2000 or retrograde is impossible because the only way we can tell what is new in Part IV is by going through every word in the Wireless Telegraphy Ordinance and finding the comparable provision in Part IV and identifying to what extent they are exact replica or changes and where there are changes whether the changes have an effect other than that which is covered by the simple explanation in the Explanatory Memorandum that the opportunity is being taken to update and though the provisions in respect of the telephone service are less voluminous the same applies in respect of the repeal of Part II of the Public Utilities Undertakings Ordinance. In particular I think it does not help to make the law understandable to people in that we have in what used to be called Wireless Telegraphy we now have Telecommunications Equipment and in which is what used to be Wireless Apparatus and what is now Telecommunications

Apparatus is in fact the telecommunications system. Given that, it is not easy to establish whether for example the many facets that there are today in terms of people using pieces of equipment to make telephone calls internationally, for example, using a computer through the internet to make calls from computer to telephones whether that is covered by some of the definitions on the descriptions in either of what used to be Wireless Telegraphy and is now Telecommunications Equipment or in the part which is telecommunications apparatus because if one looks at the definition and simply on the basis of trying to apply to the real world what this says, telecommunications apparatus means apparatus constructed, designed or adapted for use in the transmitting or receiving anything falling within any one of the following: speech, music, sounds, visual images, signal serving for the importation of any matter otherwise than in the form of sound of visual images, or signals serving for the actuation or the control of machinery or apparatus. A signal that is sent out to have remote control of a piece of equipment is a telecommunication apparatus on the basis that it is being conveyed by means of a telecommunications network. The reason why we are saying that we need to sit down with somebody who has put that there and say to him "can you explain whether in fact this means that since I am getting a telephone call in my computer and it enters through either the service provider that is Gibnet or Gib Nynex and that reaches me on my local telephone number, is that then a telecommunication apparatus and if it is does, does that mean that now people selling computers with modems in them are now selling telecommunications apparatus and was that the case in the Public Utility Undertakings Ordinance as it stands now or is there a change in the definition which makes them because some of these definitions if we go back to the contrast between the Wireless Telegraphy and the Public Utilities Undertaking and we go back to the origins of this legislation it is quite obvious where they both started.

The Wireless Telegraphy Ordinance was put in place to control the operation of Cable and Wireless and the Public Utilities Undertaking Ordinance Part II dealt with the Government Telephone Department. If we are now removing those pieces of legislation from the statute book then it seems to me that as my Colleague pointed out that what is being described is a process of re-enactment and updating, we look at the definitions and we find that some of those definitions have been there since the year dot but it is quite possible that in the light of technological development even an unchanged definition may have now a wider coverage than the old one had and it is not possible from either what has been said on the general principles of the Bill so far which has been predominantly on EEC requirements or indeed the Explanatory Memorandum to determine whether it is an intentional extension as a matter of policy or an unintended extension simply because the definition now catches something that it previously did not catch. If we look, for example, by way of illustration at the definition of telecommunication services on page 161 we are told that telecommunication services means other than in section 15 services other than radio broadcasting or television broadcasting. I ask the Government, does that mean that in the whole of this Ordinance, except section 15, radio broadcasting and television broadcasting are outside the scope of the Ordinance in terms of the mention of the words "telecommunication services" because that is what it appears to be saying. But if we go to page 181, section 15 and we look at sub-clause (iv) we are told in this section, in section 15, telecommunications services means services other than radio broadcasting and television broadcasting. That is what we have just been told the opposite of in the beginning, or is it not? Mr Speaker, I have just read page 161 and I have asked does the definition in page 161 mean that except in the case of section 15 it does not include radio and television broadcasting and I have been told yes by a nod from across the floor. Then I say if it is except in section 15 it seems to me logical that that leads me to conclude that in section 15 radio and television are included unlike the rest of the law but when I go there I discover that in section 15(iv) on page 181 it says the same as I have just read out in page 161, that is to say that in this section as well, in section 15, telecommunications services means services other than radio broadcasting or television broadcasting. Does that mean then that telecommunication services does not include

radio and television anywhere at all in the Ordinance because if that is the case it seems peculiar that in one section the exemption is in 15 and then in 15 it says that it is not exempt. Therefore it is not included in that section either. I am using that as one example of a number of things that we have been looking at where on the surface of reading it, it would appear to us to be indicating one application in one area and something else in another area and it is really either we need to have a Committee Stage in which somebody comes armed with all the information and we go through every word or from our point of view preferably and more efficiently that we list all the things that we would like cleared up and then we can take the Committee Stage in the knowledge that we know that in voting for or against something we are doing so either because we agree or disagree with what the Government are going to do. The fact is that we do not think we can do a proper job of our duty in analysing this in taking First and Second Reading in the morning and Committee Stage in the afternoon on something that has taken five years to put together.

HON CHIEF MINISTER:

Mr Speaker, the hon Members have had a month in which to have submitted that list of queries to the Government and/or its Draftsman rather than just raise them today. Presumably, at the Hon Mr Perez' request we did make available this text to him before it was public precisely recognising that it is a complex piece of legislation and that the law only requires the Government to give a week. It is not serious to expect the Opposition to do a thorough job in the space of one week so we gave the hon Member the text as soon as it was finalised and available to us. In any case it is not the Government's intention to take the Committee Stage on this Bill today anyway. This is the Bill that we are going to leave over until the next sitting of the House but that is not too far away in the future either. I regret that I cannot delay the Committee Stage and Third Reading beyond that day for the reasons that I indicated earlier to the hon Members. That does not prevent them, in the meantime, to submit their list of queries such as we can clarify between now and the resumed sitting date, will have been clarified to their satisfaction and those that have not. All I can say to the hon Members is that if there are any points left over on which we are not available to resolve to their satisfaction before that date, it does not mean that that is the end of their consideration as far as the Government are concerned. What the Government would wish to do is for the reasons that I have explained to them proceed with the legislation and bring amending legislation to correct any defects that the hon Members are able to spot. For example, I think the Leader of the Opposition is right in the point that he makes in the definition of telecommunication services that there is a terribly unhelpful reference other than in section 15 in the definition of telecommunications services in page 161 in the definition for the purposes of the whole section. Certainly that is one that we will look into and which we will be able to clarify and if it is a mistake in the drafting certainly to correct it at Committee Stage. If they have their list of specific queries I would urge them please to submit them to us immediately so that we can try and get meaningful answers to them before the next meeting of the House. However, I have to say that they might have done so already in respect of such points as they have been able to spot given that they have had this legislation available to them now for nearly a month.

Mr Speaker, if I can start with the points raised by the Leader of the Opposition. The hon Member is correct in his insinuation, although he did not state it, but of course the Government cannot commence this legislation until simultaneously we are ready to immediately commence the Regulations because otherwise we would be left with no legislation to the extent that we repeal existing legislation before we have introduced the Regulations. The intention is that the operative part of this legislation will be commenced moments before the implementation time of the Regulations giving substantive effect to the transposition. Let me tell the hon Member that the changes in Part IV are minimal. If he is interested in knowing what they are, I can arrange for somebody to point them out to the hon Member but they are minimal changes. Mr Speaker, I cannot explain to the hon Member the reasoning as to why the Draftsman thought that it was necessary to abandon the use of the phrase "wireless

telegraphy equipment" in favour of the phrase "telecommunications apparatus".

HON J J BOSSANO:

The Chief Minister means wireless apparatus which is consistent with the sort of radio receiver in terms of the average layman..... what is a radio receiver used to be a wireless apparatus and is now telecommunications equipment?

HON CHIEF MINISTER:

Yes, yes. That is what I was trying to say. It is just a modernisation of language, it was not strictly necessary. Indeed, I am told that in Australia and in the United Kingdom they retain the use of the word "wireless", but the European Union give the choice to choose our own language because Part IV does not respond to any Community requirement. Part IV is just bringing across the existing domestic legislation and taking the opportunity to modernise the language. I am told that the Community is thinking of replacing all the language used by the different Member States in respect of that type of equipment in favour of something that they will call "electronic communications". I am not sure if the hon Member thinks that that makes it more or less complicated but that is what I am told they intend to do. Mr Speaker, therefore, there is no change in this legislation to the definition, to what is included or not included under Part IV. Nothing that was not covered before is covered now because all that has happened is that a different label has been placed to the same definition. The extent of the equipment covered is the same as used to be covered before under Part IV to equipment to which Part IV applies, to equipment the remainder of the Bill applies then there is a different definition to continue to apply.

HON J C PEREZ:

I understand that it was in the old Bill but in looking at this more closely it seemed to me that having said in the old Bill that telecommunications equipment shall be construed as reference to stations and equipment for the emitting or receiving of such electromagnetic energy, that it caught the mobile telephone as well in the definition. Surely, we do not want dealers in mobile telephones to register every mobile they sell and the name of the person buying it and so on. Surely, it was not the intention in 1997 and it is not the intention now and if they are updating what was there in 1997 we ought to look at that as well.

HON CHIEF MINISTER:

Mr Speaker, the answer to the hon Member is that that is exactly what the existing law requires. It is just by administrative decision or inertia.....

HON J C PEREZ:

That is what the law requires?

HON CHIEF MINISTER:

Yes, Mr Speaker, I am being told that that is the case. It is just that it is not actually physically taken seriously. This takes me to one of the points that the hon Member made in his address which I have not yet reached.

Therefore, if I can just finish with that point which is the last one that was made by the Leader of the Opposition. Mr Speaker, the definition of what is a licensable telephone network and the hon Member gave the example of voice telephony along the internet, that remains for the purposes of Part IV whatever it has always been. There has been no change and the definition of telephone services and networks covered by the remainder of the Bill, Parts 1, II and III, that is out of the directive. To the extent that there are matters of domestic law there have been no substantive changes and to the extent that there are changes, they are changes required by the directives but not in Part IV, those will be in Parts 1, II and III.

Mr Speaker, the Opposition spokesman for telecommunications, the Hon Juan Carlos Perez, continued, having made the request echoed by the Leader of the Opposition, that we should not take Committee Stage and Third Reading and I have covered that point already, the hon Member asked "why does the Minister have power over licensing and regulation?" Mr Speaker, the Minister does not have power under licensing and Regulation. The Minister has power under licensing. The Minister is the licensing authority as opposed to the Regulator who is the Regulatory Authority. In addition, in his licensing capacity, the Minister is obliged to consult the Regulatory Authority but the Licensing Authority is the Minister. The Minister has no Regulatory Authority. The Regulatory Authority is the Regulator and he has rights to be consulted by the Minister in the case of the Minister's licensing requirements and then has his own powers, exercisable all by himself in the area of regulatory activity which is to ensure that licensees are complying with the terms of the licence, that they are complying with the terms of the Ordinance, that they are complying with the law generally. The traditional function of the regulator is exclusively a matter for the regulator. The Minister has powers to make Regulations. The Minister has powers to make subsidiary legislation but regulations for that purpose are not to be confused. I am sure the hon Member does not, with regulatory powers. The Minister is not involved in the regulation of the industry. The Minister is involved in the licensing of the industry and in making regulations under the Ordinance but not in regulating in terms of the regulatory Authority, the industry.

Mr Speaker, I suppose we can only disagree on the hon Member's view, peculiar, if he does not mind my saying so and unusual that the Regulatory Authority should also be the Licensing Authority. The issuing of licences as opposed to the regulation of licensed activity is just as easily an accepted act as it is any other business especially in an area of the economy as vital as this. I had already told the hon Member, before he made his own observations, that in the United Kingdom and indeed in many other Member States..... I have been told that the Spaniards agree with the hon Member but the United Kingdom agrees with us and that is that the Licensing Authority is the Minister and that is the case in the UK. I do not accept what the hon Member says has been a ruling by the Commission. The Government are aware that the Commission have issued a set of guidelines as to how the powers between licensor and Government owning a shareholding in a telephone company has to be exercised. They had issued guidelines because it is allowed subject to those guidelines being followed and not because it is not allowed, because if it is not allowed there would be no need and certainly it would be incongruous for the Commission to have issued guidelines saying how the function of owning a telecommunications company has got to be kept separate from the licensing function. Therefore, the Chinese walls requirements are clear and the Government are aware of this issue but we do not believe that we are any less well equipped to implement those Chinese walls than any other Government. Mr Speaker, I would just ask the hon Member to contemplate the scenario when licenses are issued to GibTel and Nynex if these matters had been outside the hands of the Government? These are important areas of policy and of economic life and the idea that these decisions should be exercised by someone who is not accountable to the Government and who is not obliged to take account of Government policy is not one that frankly we consider to be attractive and therefore we believe that in following the United Kingdom model of reserving the licensing function to the Minister and giving away the regulatory function exclusively to this independent regulator, that we are necessarily following good practice because I do not believe that the United Kingdom would implement bad practice in this respect and certainly it is a practice fully permitted by the terms of the directives, at least as they stand at the moment. It may be that there may in future be some other directive or some other development in the Community that will not permit that to continue to be the case, in which case it will have to be reviewed.

Mr Speaker, the hon Member is right in what he says in relation to how Part IV sits with the rest of the Bill but only because I omitted to mention, in my own address, that there is a need for there to be a set of exemption regulations in order to exclude from the ambit of this legislation the sort of equipment that is covered in part IV

which it is not intended to subject to the same licensing regime as the rest of the Bill. Therefore, when those exemption regulations are brought into effect the types of equipment which presently appear to have the full rigour of the licensing regime extended to them will actually not be so because they will have been exempted from the remainder of the Bill by the exemption regulation and there would simply be then that sort of equipment, cordless telephones, children's remote control type equipment, all that would simply be left subject to the existing Wireless Telegraphy Ordinance-type regime and would not be exposed to the much more sophisticated licensing regime of the remainder of the Ordinance proper.

Mr Speaker, it was on the advice of the Department of Trade and Industry in the United Kingdom that the whole of the spectrum was included. I hear what he says about laws. This legislation has firstly been drafted by lawyers acting for the Government. Then it has been looked over by our own people, the telecommunications regulator designate and others. Then it has been approved by the United Kingdom Department of Trade and Industry's own lawyers. None of that means that the hon Members are incapable of finding defects with it and any defects that they find of course we would be grateful to have pointed out to us. *(Interruption)* I am not familiar with the part of the judgement to which the hon Member refers. I am not sure that he himself is saying the point has been disposed of in manner that requires us to take the view that it should not be included but it follows United Kingdom legislation and if it is wrong we have both got it wrong.

Mr Speaker, the hon Member pointed out to section 41(1) and asked whether it was right that as a result of the splitting of functions between regulator and licensor that this function in section 41 would fall on to the Minister and not on the regulator. Of course, Mr Speaker, the function of section 41(2) was previously exercised by the Wireless Telegraphy Officer in his capacity as licensor and all the functions of the previous licensor are now vested on the Minister as they are in the United Kingdom. I am certain that I do not agree with the hon Member when he says that it is wrong for it to be the Minister who has to authorise certain things failing which they are offences. Everything that the Minister does by way of licensing has attached to it an offence if one does it without the Minister's license. The hon Member's point of principle appears to be that it should not be Ministers who have the power to give or not to give, to say or not to say, in a way which results in the commission of an offence otherwise but that happens all of the time.

HON J C PEREZ:

Would the hon Member give way? I am not sure whether this part of the Ordinance is the one that..... for example Police Officers might have to come and use in the event that because of an investigation they would like to interfere with the wireless telecommunications of some people.

HON CHIEF MINISTER:

No, Mr Speaker, this section does not give the right to intercept. This is not a right to intercept telephones.

HON J C PEREZ:

"A person who otherwise than under the authority of the Minister". The Minister has the authority to empower people to intercept as the Ordinance is read.

HON CHIEF MINISTER:

Mr Speaker, the provisions are the same ones as are there already. This is not new law. In the UK, I am advised that these powers are held by the Secretary of State who is an elected and active politician. Certainly I have to tell the hon Member that as a matter of principle..... I do not want to engage right now in constitutional discussion, indeed I suspect that he probably agrees with me, that as a matter of political principle I do not think that we should proceed on the basis that what is okay for elected ministers in the UK to do is wrong simply because it is done by

Ministers elected here by our own electorate as opposed to the UK electorate. I can tell the hon Member that there has been no conscious decision on the part of the Government..... this is one of the issues that as the hon Member says has fallen by the..... This is not a function that is appropriate for the regulator to exercise. I do not see anything wrong with this but what I will do between now and the Committee Stage is have a closer look at it to see if it raises any of the issues that the hon Member is suggesting. The hon Member ought to bear in mind that of course an officer in the course of his duties as an officer of the Crown already has the powers to do this, without ministerial authorisation. Therefore, Mr Speaker, that is already the case.

HON J C PEREZ:

Would the hon Member give way? Certainly, if it is going to stay in there it needs some sort of regulation to say when and how and for what purpose that power may or may not be used.

HON CHIEF MINISTER:

Mr Speaker, it is not an issue that has been looked at. It is simply the bringing across from the existing law of law that has always been the law of Gibraltar. As there is no longer something called the Wireless Telegraphy Officer it has just been parked under the name of Minister because that is where it is in the United Kingdom. Certainly, I am willing to look at it to see if it raises any issues but if the matter had to be resolved right now, which it does not have to be resolved right now, my information would be to say it is perfectly okay. It cannot be wrong as a matter of principle if it reflects the position as it is in the UK. I do not think we should proceed on the basis that our Ministers here cannot be trusted with powers that Ministers are trusted with elsewhere. Whatever the hon Member might think of Ministers in this or any other government at any given time, I think as a matter of principle that the hon Member would probably subscribe to that view as well.

Mr Speaker, the other point that the hon Member made was when he asked whether Parts III or IV go far enough to protect the public. This legislation deals only and purports to deal only with the transposition of the directives that it mentions there. There are two data protection directives on which drafting work is at an advanced stage - one is the Data Protection Directives and the other is the Data Protection Telecommunications Directive. A particular one in relation to telecommunications in which legislative drafting is also at an advanced stage but that data protection legislation will be brought to this House separately as a package and this is not an attempt nor does this legislation purport to cover any of those data protection directives, not even telecommunications. Although there is the reference to the requirements of the telecommunications directive precisely because it is not already law. If it had already been or if we had been bringing the law today on telecommunications then we could refer to the Data Protection Telecommunications Ordinance but we cannot because the law is not yet available and therefore we are incorporating the terms of the directive by reference.

HON J C PEREZ:

The Chief Minister misunderstood what I was saying. Given that there are provisions of one kind under one section of the law and provisions of another kind under another section of the law, and there is this directive that we are going to have to implement, would it not be better to join both things together and implement the directive now? The hon Member has already said that he has got a timetable and that he intends to implement the directive at a later stage.

HON CHIEF MINISTER:

Mr Speaker, it was the intention to do them at the same time and much of the early drafting was done with a view to taking the telecommunications legislation and the data protection legislation at the same sitting of the House but the data protection drafting was not as advanced as the telecommunications legislation and this became urgent so we decided to proceed with this on its own but it was not exactly the intention to have proceeded in the way that the hon Member suggests might have been better.

Mr Speaker, that leaves me with the point of emergencies. I will not deal with the question of whether it is right that the Government as opposed to the Governor should be in control because I believe the hon Member made clear that that was not the point that he was making. The hon Member says that it is right that the Government should be in control but nevertheless he felt that even though it was right for the Government to be in control of the network, if an emergency exists and is declared he nevertheless believes that it should not be the Minister who declares the emergency in the first place. Having narrowed the issue between us in that way all I can tell the hon Member is that it is the same as happens everywhere else. In the United Kingdom the only person who makes the decision on whether an emergency exists for the purposes of their equivalent of this section is the Secretary of State. Mr Speaker, I do not know whether the hon Member believes that things that are okay for Ministers to do in the UK are not okay for Ministers to do in Gibraltar. If he believes that, all I can tell him is that I profoundly disagree with him. Certainly in uncontroversial and uncontentious areas where our small size makes it less desirable that things are done by Ministers than in a larger country but certainly not in run-of-the-mill sort of stuff such as this. I am advised that this power is held by the Secretary of State in the UK and my hon Colleague Mr Azopardi, who the hon Member believes should not be the only man to make this decision is in the same democratic position as his counterpart in the United Kingdom. Somebody has got to make the decision of whether an emergency exists. An elected Minister who is answerable in this House, who is accountable for his decisions and for his actions initially in this House and ultimately to the highest court in the land which is the electorate seems to me better than the alternative which must necessarily be..... and I am not putting to the hon Member the view that it should be the Governor..... I suppose he might have in mind some form of quango or commission or..... Mr Speaker, the Minister is the Minister and there is joined up Government. Whether in practice this is a decision that any Minister of Trade and Industry and Telecommunications would actively make without referring the matter to the Council of Ministers is another matter. It depends I suppose for how long he wants to keep his portfolio for but certainly I think it is right that the power should be vested in the Minister as it is anywhere else and then the Government make their internal decisions however they see fit.

HON J C PEREZ:

Mr Speaker, I am merely protecting not only the public but the Minister too because having heard his last comment and having been in office for eight years myself I would not like to be in a position of having to decide in my own opinion what constitutes an emergency particularly since the Chief Minister has said what happens if he consults and the thing is wrong, later he is the one responsible answerable to the House. I think it has to be a more collective decision by more people in power to decide what constitutes an emergency and I do not think the control of messages is something minor. It is something which is of major importance.

HON CHIEF MINISTER:

Yes, of course it is of major importance. Where we part company is not in thinking that this is a matter of major importance. It is in his apparent view that because things are of major importance they cannot be entrusted to Ministers of the elected Government. I think that any Minister of an elected Government is in a position precisely to undertake things because they are important and because the electorate has voted them in and entrusted them to exercise judgements of this sort.

Mr Speaker, if the Government were doing here something which was unique to Gibraltar and which was not how governments in other European countries did it, I would have a little bit more sympathy for his view but I am in the considerably comfortable position of being able to tell him that the way that we are going to do it here is the way that it is done in most government states and certainly the way it is done in the United Kingdom, according to the information being given to me. Therefore, I think that it raises no issue of principle. I have every trust in the Minister for Trade and Industry and Telecommunications to exercise this important

function as responsibly as he exercises all his other considerable and important ministerial functions. The fact that he is only the Minister of a colonial government does not lead me to the inevitable conclusion that he is therefore disqualified from exercising judgement in the same important areas as Ministers of non-colonial governments.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I have the honour to move that the Committee Stage and Third Reading be taken at a later date.

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 Gibraltar Regulatory Authority Bill 2000;
(2) The Income Tax Ordinance (Amendment) Bill 2000;
(3) The Immigration Control Ordinance (Amendment) Bill 2000;
(4) The Social Security (Insurance) Ordinance (Amendment) Bill 2000;
(5) The Criminal Procedure (Community Service Orders) Bill 2000.

**THE GIBRALTAR REGULATORY AUTHORITY BILL 2000**

Clauses 1 to 4 stood part of the Bill.

Clause 5

HON CHIEF MINISTER:

In section 5(5)(a) on page 140 there ought to be an "or" after the semi-colon so that it should read "A delegation of the nature referred to in sub-section (2) shall be made only on terms which allows the Gibraltar Regulatory Authority to revoke the delegation: (a) in its absolute discretion; or (b) upon the direction of the Minister; and.....". It is the insertion of "or" after the semi-colon in (a). I do not think this alters the meaning. My further proposal is to remove "and" from after (b), if we do not delete the "and" it suggests that one can only do it when both (b) and (c) are present. (b) and (c) are not cumulative conditions, they are separate and free standing conditions. I think the comma can remain. After the semi-colon in (a) we are putting "or". Then in (b) we are simply removing the word "and" after the comma. My final amendment is to delete (c) and have the words "and without any liability upon the Gibraltar Regulatory Authority or the Minister or both..." then becomes something that applies to both (a) and (b), ".....without any liability upon the Regulator or the Minister or both....." are words that apply to all revocations of delegations whether it is in the discretion of the Authority or upon the direction of the Minister. We would delete the (c), we would add the word "and" in front of the word "without" and bring it all back to the margin so that it is in line with the word "delegation" above it.

Clause 5, as amended, stood part of the Bill.

Clauses 6 to 8 stood part of the Bill.

Clause 9

HON CHIEF MINISTER:

In 9(1) I have already suggested the removal of the comma. My proposed amendment is to insert after the words "shall have power" to add there, instead of the comma, the words "within the limits of allowances and expenses set by the Assembly". This is for the protection of the Authority, so that if the Assembly denies it

the funding to do what it might be required to do, if it does not have the funding from the Assembly then it cannot be held in breach of statutory duties for not doing it. That is the effect of inserting there, after the words "Authority shall have power" the words "within the limits of allowances and expenses set by the Assembly".

Mr Chairman, and to delete the same words where they appear in sub-section (2) which is a permissive section and therefore cannot expose the Authority to liability. "Within the limits of allowances and expenses set by the Assembly" is not necessary in sub-section (2) but is necessary in sub-section (1) and is not necessary in sub-section (2) because sub-section (2) is permissive and not mandatory. Certainly no one could say that the Authority is in breach of any obligation for having failed to do something that it is only able to do as opposed to something that it must do.

HON J J BOSSANO:

Mr Chairman, surely in sub-section (1) there are no duties put on the Authority? It says it has the power to do all these things. Surely, having the power to do something is not the same as requiring that thing to be done? The argument does not seem to hold together.

HON CHIEF MINISTER:

Yes, I suppose I could more clearly have put it by saying that sub-section 9(1) incorporates 9(2). If the hon Member reads 9(1) it says "subject to this or any other Ordinance the Gibraltar Regulatory Authority shall have power....." we have now inserted within the limits of allowances and expenses set by the Assembly to do all things necessary for and ancillary or reasonably incidental to the carrying out of the functions referred to in section 3(2), which are none.

Mr Chairman, I think the hon Member is right. I would like to withdraw the amendment to 9(2) and leave the words in 9(2). They are not excluded by the amendments we have made to 9(1). I think the hon Member is right.

Clause 9, as amended, stood part of the Bill.

Clauses 10 to 14 stood part of the Bill

The Long Title

HON CHIEF MINISTER:

Mr Chairman, to delete from the title the words, "the payment of monies to it" which no longer arises because licensing fees are not payable to the regulatory authority. Licensing fees are payable to the Government and this was there at the time. That misconception has been taken out from the Bill but the Draftsman omitted to reflect that in the title.

HON J J BOSSANO:

Mr Chairman, obviously to be consistent we will vote against that deletion because the payment of licence fees to the Authority presumes the issue of the licences by the Authority which my Colleague has been advocating.

The Long Title, as amended, stood part of the Bill.

Question put. The House voted.

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

For the Noes: The Hon J L Baldachino
The Hon J J Bossano
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon J C Perez
The Hon Dr R G Valarino

**THE INCOME TAX ORDINANCE (AMENDMENT) BILL 2000**

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

**THE IMMIGRATION CONTROL ORDINANCE (AMENDMENT) BILL 2000**

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

**THE SOCIAL SECURITY (INSURANCE) ORDINANCE (AMENDMENT) BILL 2000**

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

Clause 2

HON J J BOSSANO:

Where the provisions are contained for the maternity grant to be reduced in relation to the level of income of the applicant for the grant and we have already said we are against that so if that is going to stay we are voting against that. I am not sure whether that requires that a separate vote should be taken because it is a clawback in the context of Social Security about which we feel very strongly.

In Section 2(3) is where the benefit is provided. What we are voting against is Section 2(2) really which is where there is a provision that says that the amount of benefit is reduced by £35 for every £1000.

Mr Chairman, one way of doing it is to move an amendment which gets defeated and therefore that might be easier than asking for a separate vote on sub-clause 2(2) and sub-clause 2(3) in which case I move the amendment to clause 2 to delete sub-clause (2) and to renumber sub-clause (3) as sub-clause (2).
Question put. The House voted:

For the Ayes: The Hon J L Baldachino
The Hon J J Bossano
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon J C Perez
The Hon Dr R G Valarino

For the Noes: The Hon K Azopardi
The Hon Lt Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon R R Rhoda
The Hon T J Bristow

The amendment was defeated.

Clause 3 stood part of the Bill.

Clause 4

HON J J BOSSANO:

In Clause 4 the reference to the appointed day, what we are doing here is we are saying that the Minister shall determine what the

appointed day should be. As I said in the General Principles of the Bill we read that to necessarily imply that the appointed day and the date of coming into force which is in Clause 1 which we have already voted could not be the same date. If it is the same date then I do not think we can support that we have just voted for the appointed date to be the 10th February and we should now vote giving the Minister, in theory, the power to change the date that has been voted by the House.

HON CHIEF MINISTER:

Mr Chairman, I do not think the Opposition has voted for the appointed day to be 10th February, they have voted for a Bill which says "it shall be deemed to have come into force on 10th February". Imagine all this is happening on the 10th February and then add a provision that says "appointed day". All I did was tell the hon Member this morning that I thought it was an unnecessary provision because it is the intention of the Government that this should operate with effect from the 10th February. Therefore, it is superfluous but not contradictory. I am not quite sure what would be the practical purpose of it but we could pass this Bill today and say that it is deemed to have come into force on 10th February 2000 and the Minister then decides that the appointed day should nevertheless be the 4th April. It is not our intention to do that.

HON J J BOSSANO:

I accept that having said in the House that it is not the intention, I take it but the whole point is that in the clause we are now considering in Committee the payment of the grant is related not to the commencement date in Clause 1, it does not say for example "section 10A(1A) shall not apply to persons who are entitled to maternity grant prior to the date on which this legislation was deemed to come into effect" or "prior to the 10th February". It says "prior to the appointed day". Therefore, on the reading of the Bill it suggests that the appointed day is the date on which the grant comes in and not the date in clause 1.

HON CHIEF MINISTER:

Mr Chairman, I accept that everything that the hon Member says is axiomatic. I do not know why it has been done that way. Perhaps the Draftsman did not know that it was the Government's intention in any case to choose the same days for both. Mr Chairman, it is just safer for us to leave it given that it does no harm than it is to delete it and risk some official then saying "ah, but that was there for some quite different reason" and then find that we have got to come back to the House. Even if everything that the hon Member says is right the consequence is just superfluous, that it suggests that something is going to happen which the hon Members are being told is not the Government's intention that it should happen. It does not do any harm. It does not deprive the legislation of effectiveness and were I 100 per cent sure as I stand on my feet that it could be deleted safely I would agree to delete it because what the hon Member says sounds logical but because it does not do any harm and I cannot be certain that that is right without referral I would like to leave it. I am not actually disagreeing with him, I am just saying to him that even if he is right it is not actually necessary to remove it.

HON J J BOSSANO:

Mr Chairman, I do not want to labour the point unnecessarily but I do not think that in the general principles of the Bill, when I raised the apparent implications of what we are providing in this section, in that different regimes would apply at different dates I do not think that was adequately addressed and therefore I would ask the Chief Minister to take note that if in 4(1) we are saying that section 10A(1A) shall not apply to persons who are entitled to maternity grant prior to the appointed day, the explanation that he gave me was that that was to make sure that the reduction in the level of grant was not applied before 10th February to people getting the £35. That is the answer the Chief Minister gave me and he gave me the answer because that must have seemed to him what the answer ought to be but I put it to him that that cannot be the answer because in fact Section 10A(1A) does not have a table which permits less than £35. If we are legislating

saying that the reduced levels shall not apply to people who get the maternity grant before the appointed day, the maternity grant in question cannot possibly be £35 as I was told earlier because the minimum in that table is £78. So it has to be. One can only apply 10A(1A) to the new level of grant and therefore that is only consistent with the view that there is a commencement date which triggers payment and an appointment date which triggers clawback. That is what I think they are doing. We are in disagreement with that and therefore we have to vote against it because we think that is what this means and I am afraid the explanations we have had do not convince us that that is not what it means.

HON CHIEF MINISTER:

Mr Chairman, the hon Member did not mention the appointed day issue at all. It was I who said in my reply that I thought he was going to raise the question of the appointed day because it struck me as unnecessary. He limited himself, in his own address, to querying whether sections 4(1) and 4(2) were incompatible with one another or were necessary.

Mr Chairman, section 10A(1A) deals with the tapering between £30,000 and £40,000. Therefore, a statement to the effect that section 10A(1A) shall not apply to persons who are entitled to maternity grant prior to the appointed day is saying that if one is entitled to a maternity grant prior to the appointed day one is not liable to that tapering. Section 4(2) then says "without prejudice to the foregoing provisions of this section....." the one we have just been discussing "..... a person who is entitled to a maternity grant prior to the appointed day shall be entitled to a maternity grant as if section 10A(1A) of the principal Ordinance had not been enacted".

HON J J BOSSANO:

..... which is the same section again.

HON CHIEF MINISTER:

Which is the same section again. If such a person is a person who is entitled to a maternity grant prior to the appointed day is entitled to one as if the section providing for the tapering had not been in existence then it is saying that she is entitled to it without the tapering.

HON J J BOSSANO:

Absolutely.

HON CHIEF MINISTER:

But at the old rate, not at the new rate.

HON J J BOSSANO:

No, Mr Chairman. This is the whole point, because there is nothing here that says the new rate shall come into effect on the appointed day. It says the clawback shall come into effect on the appointed day. The new rates necessarily have to come into effect on the 10th February. We have said it is deemed to come in, the law is deemed to come in on 1st February.

HON CHIEF MINISTER:

Yes, but no one can have acquired that right before 10th February. Anybody before 10th February must necessarily only be entitled to it at the old rate.

HON J J BOSSANO:

Yes, Mr Chairman. Therefore, the point that I made earlier I may not have succeeded in making the Chief Minister realise that I was making two different points. First of all that the repetition of the same clause in both 4(1) and 4(2) seemed unnecessary but in any case it seemed to create the option that on 9th February you get £35, post 9th February and pre the appointed day.....

HON CHIEF MINISTER

.....given that that is not the Government's intention, whether the sole concept of the appointed day is necessary at all. That is the point that I was trying to make in my original response to him this morning.

HON J J BOSSANO:

If that is not the intention then I agree with the Chief Minister that there seems to be no other purpose to the appointed day, other than that. It seems to me that the drafting of this has been worked on the premise that we can make a benefit retrospective but we cannot make a clawback, as it were, retrospective and that therefore the clawback starts from a current date and the benefit may start from 10th February. That is how I read this in terms of trying to understand what was in the mind of the person drafting it because that is quite an established principle that we have had on more than one occasion, that taxing people is something one can only do from a current date and therefore if that is the essence of the argument it would then mean that the day the legislation gets assented and comes into effect would be the appointed day but it would be deemed to have come into effect on the 10th February for the purpose of paying people the benefits retrospectively but that one could not apply the clawback retrospectively.

HON CHIEF MINISTER:

Mr Chairman it may be that. No one has said to me that whereas one can have the benefit retrospective that one cannot have the tapering above £30,000 retrospective. I do not think that is the reason although I accept it is a possible reason. I do not think it actually is the reason but if it is I suppose that is all the more reason why we should leave it given that it does no harm. It has got to be there to provide for the fact that if it were the law that one cannot have a tapering down of a benefit applied retrospectively then it would be necessary to reserve to the Minister the need to appoint a day which would necessarily have to be some day after today. But that is an if. I have never heard the proposition put before that in increasing a benefit retrospectively one cannot have a complicated formula so that the increase for some people is less than for others.

I take note that the hon Members are against the principle anyway but if they were not against the principle and it were going to be their intention to vote in favour, which it is not, it would not have been necessary for them to vote against only because we are not taking this out because this is at worse clumsy and unnecessary and does not do any damage. They are against it for other reasons anyway, that is all I was trying to suggest.

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 Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon R R Rhoda
The Hon T J Bristow

For the Noes: The Hon J L Baldachino
The Hon J J Bossano
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon J C Perez
The Hon Dr R G valarino

Clause 4 stood part of the Bill.

The Long Title stood part of the Bill.

**THE CRIMINAL PROCEDURE (COMMUNITY SERVICE ORDERS) BILL 2000**

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 Gibraltar Regulatory Authority Bill 2000, with amendments; the Income Tax Ordinance (Amendment) Bill 2000, the Immigration Control Ordinance (Amendment) Bill 2000; the Social Security (Insurance) Ordinance (Amendment) Bill 2000, with amendments; and the Criminal Procedure (Community Service Orders) Bill 2000 have been considered in Committee and I now move that they be read a third time and passed.

Question put.

The Income Tax Ordinance (Amendment) Bill 2000; the Immigration Control Ordinance (Amendment) Bill 2000 and the Criminal Procedure (Community Service Orders) Bill 2000, were agreed to and read a third time and passed.

**THE GIBRALTAR REGULATORY AUTHORITY BILL 2000**

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 Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon R R Rhoda
The Hon T J Bristow

For the Noes: The Hon J L Baldachino
The Hon J J Bossano
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon J C Perez
The Hon Dr R G Valarino

The Bill was read a third time and passed.

**THE SOCIAL SECURITY (INSURANCE) ORDINANCE (AMENDMENT) BILL 2000**

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 Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon R R Rhoda
The Hon T J Bristow

Abstained:: The Hon J L Baldachino
The Hon J J Bossano
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon J C Perez
The Hon Dr R G Valarino

The Bill was read a third time and passed.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Monday 23rd October 2000 at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 5.25 pm on Monday 9th October 2000.

## MONDAY 23RD OCTOBER 2000

The House resumed at 10.05 am.

PRESENT:

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

Government:

The Hon P R Caruana QC – Chief Minister
The Hon K Azopardi – Minister for Trade, Industry and Telecommunications
The Hon Dr B A Linares – Minister for Education, Training, Culture and Health
The Hon J J Holliday – Minister for Tourism and Transport
The Hon Lt-Col E M Britto OBE, ED – Minister for Public Services, the Environment,
Sport and Youth
The Hon H A Corby – Minister for Employment and Consumer Affairs
The Hon J J Netto – Minister for Housing
The Hon Mrs Y Del Agua – Minister for Social Affairs
The Hon R Rhoda QC – Attorney-General
The Hon T J Bristow – Financial and Development Secretary

OPPOSITION:

The Hon J J Bossano – Leader of the Opposition
The Hon Miss M I Montegriffo
The Dr R G Valarino
The Hon J C Perez

ABSENT:

The Hon Dr J J Garcia
The Hon J L Baldachino
The Hon S E Linares

IN ATTENDANCE:

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

### SUSPENSION OF STANDING ORDERS

HON CHIEF MINISTER

I beg to move the suspension of Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the Committee Stage and Third Reading of the Telecommunications Bill 2000.

Question put. Agreed to.

HON ATTORNEY-GENERAL:

I have the honour to move that the House should resolve itself into Committee to consider the Telecommunications Bill 2000, clause by clause.

## THE TELECOMMUNICATIONS BILL 2000

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

Clause 2

HON J J BOSSANO:

Mr Chairman, with your indulgence we are going to need to seek clarification in a number of clauses because in the general principles of the Bill there was no detailed reference to different things and, frankly, the Opposition have looked primarily at Part IV of the Bill in detail which is the one where we were told which sections in the now repealed Wireless Telegraphy Ordinance were being transposed to this one. That has meant, effectively, going word by word through both the new and the old version but we have not been able to do that with the rest of the Bill because it was impossible to know what was in here which is new. Can I say in terms of the definitions, in the interpretation in Part II, there is a reference on page 160 to telecommunications apparatus and telecommunications network. Telecommunications network in this context is defined as a transmission system which includes the conveyance of signals between defined termination points by wire, radio, optical or other electro-magnetic means. That seems, therefore, to mean that the network is something that can be covered by Part IV which is provisions relating to the electro-magnetic spectrum, given the fact that it actually says optical or other electro-magnetic means. If we relate then that to telecommunications apparatus further up, where it talks about the transmitting or the receiving of speech, music, sounds, visual images et cetera, which is to be or has been conveyed by means of a telecommunications network, that would suggest that, for example, anything that is transmitted between defined points by electro-magnetic means is covered by the definitions here and, of course, there are different definitions given in Part IV for what telecommunication means when it is related to electro-magnetic spectrum. We find that difficult to follow because if we try to give ourselves examples of what is being done in this legislation to control what and we are talking about a situation where, for example, we have already referred in the general principles of the Bill to things like mobile telephones and of course there are modems in computers which can be used for voice telephony both domestically and internationally and therefore in voting we would like to know what we are voting. If we vote for this section are we in fact covering modems in computers in telecommunication apparatus given the fact that they can be used to transmit speech, music, sounds, visual images and all the rest of it? Television receivers and television transmitters have always been covered by the Wireless Telegraphy Ordinance and presumably continue to be so but of course the dividing line between different pieces of electronic equipment is blurring all the time. Nowadays we are approaching the age where a computer can be a television set or a television set can be a computer or a telephone or anything else if one has got enough accessories attached to it. We would like clarification of precisely what is and what is not covered by this and if we have, for example, computers which have modems, I am not sure whether the modem is the apparatus or the computer is the apparatus because presumably without the modem the computer cannot be used for telephony. Does that mean then that the Internet service provider has to be licensed as a network operator given the fact that he is acting as a conduit for the transmission of telephony, speech, music and images?

HON CHIEF MINISTER:

Mr Chairman, the Bill makes it clear that there is overlap between Part IV and the rest of the Bill in so far as concerns those

methods of telecommunications which use the electro magnetic spectrum. If the hon Member, as I am sure he has done, considers the terms on page 204 of the Bill of proposed section 29(18) he will have realised that there is specific provision in the Bill which says that the grant of a telecommunications licence under Part IV does not relieve the person from the obligation to obtain a telecommunications licence under the rest of the Bill and therefore that the legislation is specifically drafted on terms that in the case of certain types of telecommunications networks and services one will need more than one licence and one would need a licence under two parts of the Bill. Sub clause (18) to which I have referred the hon Member reads "....the grant of a telecommunication licence does not relieve a person who has been granted the telecommunications licence or any other person who services the person of any requirement to hold an authorisation under section 16 or any other licence required under any other Ordinance". So if an authorisation is required and the hon Member knows how authorisation is defined in section 2, an authorisation is defined as a licence, then a person may well need to. The hon Member has asked also about specific items of telecommunications equipment, as to whether they are included and also whether certain types of servers, namely Internet service providers are included or not.

Mr Chairman, the main body of the Bill licences telecommunications networks and the provisions of telecommunications services. Those two phrases are specifically defined, so the question whether a particular item of equipment is deemed to be part of the network or whether it is deemed to be an apparatus which is used in connection with the network by an end user is a matter for the exact definition of these items. There is then the separate requirement that apparatus used in connection with a network itself, even if it is not part of the network but something that one could plug into the network, itself needs to be approved by the Telecommunications Regulator to ensure that it would not damage the integrity of the network. To answer the hon Member's question specifically, is an Internet service provider covered by this licensing requirement? Mr Chairman, if we go to the definition of telecommunications services we will see that it covers services other than radio and television broadcasting, the provision of which consists solely or partly in the transmission and routing of signals from telecommunications networks. Telecommunications networks means the transmission systems and, where applicable, switching equipment and other resources which permit the conveyance of signals between defined termination points by wire, radio, optical or other electro magnetic means. Therefore, Mr Chairman, whether the internet service provider falls into that category depends on whether he falls into that definition. The words are perfectly clear and if the hon Member is asking me whether an internet service provider falls into that category, that does not arise from the legislation. If the hon Member is thinking specifically about the existing situation that we have with one of the service providers who were using a laser link that would form part of a network for these purposes and would require licensing.

HON J J BOSSANO:

Mr Chairman, I am afraid the Chief Minister has not made anything any clearer because I have read and I am able to understand what I read and of course I accept that in section 18 it says that if a person has a licence under Part IV it does not exempt the person from the requirement to hold authorisation under section 16 or any other licence under any other Ordinance. Presumably that is true of every Ordinance. The fact that one is allowed to do something under one law does not mean that one can do what one likes under every other law without the requirements laid down in the other Ordinances. The point is not that it says there that one needs a licence if it applies. I am trying to establish whether it applies, whether it is something that the Government have in the full knowledge of who this is going to apply to drafted the legislation to make the definitions the way they are made so that it is the intention that internet service providers should fall within the definition of telecommunications network and then we know that we are voting for a law that will require internet service provider to be treated the same as telephone companies. It is not worth saying that is what the definition says and either they fall in it or they do not. I would

expect that in moving the Bill in the House the House is being asked to vote to pass a law where it is known to whom it is intended that the law should apply. I think there is in a particular section in Part IV where when we come to that point I will draw attention to it. It could be that there are occasions when the wording of the law appears to have the effect which may not be intended. We have looked at some areas where we do not think the Government could have intended this to be the case and of course we will deal with those specific points when we come to it. But here effectively what I am saying is the definition of telecommunication apparatus and the definition of telecommunications network seems to be cast in a way which will go well beyond the two telephone companies that are now covered by the Public Utilities Ordinance and anybody else that wants to come in and do what they are doing. If that is the case then we need to know that this is being done and we need to know that it is what the Government want to do because the whole business is that this is a liberalisation Bill. What we are supposed to be doing is changing old laws which gave operators in telecommunications privileged positions and we are implementing directives which require the Gibraltar market to be opened up. We accept that, we will support that, not because we necessarily think it is going to be something that we will benefit from but because we have to do it and of course we expect that Gibraltar-based telephone companies should get reciprocal rights everywhere else in the European Union in liberalised markets elsewhere, whether they do or they do not is another matter. But if in the process we are doing other things which are not Community requirements, then it is a matter of Government policy that presumably policy decisions have been taken as to whether to do a. or to do b. We can only try to establish whether this is happening by this method because we do not have a Bill that says ".....in section so and so delete this word and replace.....". If we could do that it would be much easier to identify but in the context where we have something totally being removed and something being put in its place then we have to try and work out ourselves whether in fact the definitions here are such that it catches a very wide area because it is the intention that that should be so.

HON CHIEF MINISTER:

Mr Chairman, if I could just take issue with the hon Gentleman. The hon Member started by asking two perfectly clear questions and when I gave him the answer to one of them and pointed out that the answer was actually contained in the Bill, the hon Member cannot then pretend that he has not asked the question. The hon Member originally asked two separate questions. The hon Member originally asked the question that he now re-asked and he originally asked, unless I have gone deaf, whether we thought that there was..... Mr Chairman, the hon Member can giggle and he has got to hear what I have got to say as well as we hear what he has to say. His original points were two - one was that he had noticed that the electro magnetic wireless-type of equipment was covered both in the first part of the Bill and also in Part IV and the hon Member asked, and it is not the first time that he has asked it, in fact his colleague the Hon Mr Perez made the same point at the time of the Second Reading, whether this meant that they were covered by both sections, by both the front part and Part IV. I have simply limited myself to saying "yes, they are". They are covered by both Parts I and II and by Part IV and that that is intended to be so because sub-regulation (18) actually envisages that fact by saying "the fact that you have got a licence under Part IV does not mean that you are relieved from the need to obtain a licence under the earlier part of this same Bill". The answer to the first question that the hon Member puts is "yes". In the case of some telecommunications services on certain types of telecommunications networks one is caught both by the licensing requirements under Part IV and the licensing requirements under Part II. Therefore one needs not one but two licences. The answer to the hon Member's first question is "yes".

Mr Chairman, I do not know whether the hon Member has forgotten but that was the very first point that he asked and that is the answer. The second point that the hon Member has asked, he has not repeated again. Mr Chairman, liberalisation is precisely intended to give others than just the existing operators access to a liberalised market. This Bill is not designed to protect the position of the established operators. It is designed to allow

others liberalised access to two different markets. The market in the provision of telecommunications networks and the market in the provision of telecommunications services which are, of course, two different things because one can be a service provider without owning a network and indeed one can own a network and hire it out to other service providers without actually being a service provider. This legislation, not by itself, I think we made clear at the time of the Second Reading, that the actual liberalisation compliance with the directive would not be affected until the various items of regulations that I highlighted at the Second Reading are also in place. Mr Chairman, there is no element of domestic policy in any of these definitions that the hon Member has said. I suppose that he has compared the legislation with the directives. All these definitions are drawn from the directives except the definitions of telecommunications apparatus which one did not exist before which is drawn from the United Kingdom's Telecommunications Act, current law in the United Kingdom. This legislation contains no domestic policy, no decision. This legislation is brought to the House in compliance with EU obligations. Therefore, the hon Member should not think that there is reflected in this legislation elements of Government policy. Let me just correct that. Where there is margin in the directive, where the directive gives options for exemptions, options for different ways of doing things, obviously a judgement has been made as to how those options should be exercised in the case of Gibraltar. But the underlying principles of the legislation, including the services and apparatus which is covered and the element of liberalisation that it delivers, and how it delivers it, are drawn directly from the directives.

HON J C PEREZ:

Mr Chairman, what the Chief Minister does not explain is why there is a requirement for two different licences given that the interpretation in Part I of the licence and certain interpretations in Part IV of the Bill seem to coincide one with the other. Therefore, what we are asking is if what part of what there is in Part I is also in Part IV, we cannot understand the necessity in some cases of having two licences even though we understand that the law says that there might be two licences. Why do they need two licences?

HON CHIEF MINISTER:

Mr Chairman, why should one need two licences from the same authority when one only needs one? Let me answer that question in two parts. Why is Part IV in the Bill at all? Part IV is in the Bill because the Wireless Telegraphy Ordinance does not deal just with telecommunications. The Wireless Telegraphy Ordinance deals with all sorts of wireless telegraphy transmission of signals for the operation of things by remote control, for the operation of satellite tracking systems. There is a whole series of non-telecommunications-related wireless telegraphy acts that require licensing and all we have done is brought the existing Wireless Telegraphy Ordinance, with a bit of nomenclature change, into this Ordinance so that it all stands in one piece of law. In the United Kingdom they still have it in two separate laws but to the same effect. In the United Kingdom one has a Telecommunications Act and a Wireless Telegraphy Act in two separate bits of legislation but also requiring, I am advised, certain people because of the overlap to have licences under both, for example, mobile telephone operators. Mr Chairman, I cannot tell the hon Member why it is necessary. What I can tell him is why it is necessary for this to be retained in this legislation and that is because there is the Wireless Telegraphy Ordinance, as we used to have it, does not become redundant as a result of the new Telecommunications Bill because it continues to regulate activity that still requires to be licensed. Secondly, I can tell the hon Member, that that is not unusual because the situation in Gibraltar replicates the position in the United Kingdom except that there they have it in two separate bits of legislation and we, for public convenience, have chosen to bring them into the one. For example, we could easily have left the Wireless Telegraphy Ordinance untouched and then people would have had to go to two separate Ordinances to know what their licensing requirements are. We have simply chosen to bring in by way of a consolidation exercise the Wireless Telegraphy Ordinance so that all the principal legislation in this area will be contained in one

piece of law. We just have in Gibraltar in one Ordinance what in the United Kingdom is dealt with in two. I have to also remind the hon Member that one of the regulations that will be made under this is the Exemptions Regulations through which the Government, and there the Government do have scope for policy decisions as to how much of what is presently requires licensing under the old Wireless Telegraphy Ordinance which I am advised does not require licensing in most of the rest of Europe any longer. There are certain short range telecommunications equipment, certain types of remote control equipment which in Gibraltar still requires to be licensed under the Wireless Telegraphy Ordinance which I am told in the rest of Europe no longer requires to be licensed and therefore the exemptions Regulation will then follow to bring our law into line with the rest of Europe as to what does not require licensing which has always historically required licensing in Gibraltar. It has nothing to do with telecommunications in a professional context but things like remote control things, walkie-talkies, certain types of short range apparatus which are not capable of being used to provide a professional telecommunications service and which are usually personal, some times even toys and that will come in the Exemption Regulations.

HON J C PEREZ:

The last part of what the Chief Minister has said does not refer certainly to this clause but it refers to Part II Clause 4 sub-clause (1)(c) on the regulation of apparatus and connected to what the Chief Minister has said I was querying what responsibility does that regulation impose on suppliers of present equipment such as modems and telephones which today are unregulated. The end terminal equipment has been liberalised within the European Union for a long time and there seems to be a regular regime of approval of apparatus for a number of areas which do not exist today.

HON CHIEF MINISTER:

Yes, Mr Chairman. The intention is to use the exemption regulations to eliminate the existing requirement to license. At the moment a dealer in these bits of equipment needs a licence to deal if the equipment itself needs to be licensed. If the equipment itself needs to be licensed the dealer needs to have a dealers' licence. The intention is to use the exemption regulations to eliminate the requirement for licensing to allow stuff that presently needs licensing and that therefore the dealers presently need dealers' licences but in respect of the specific items that he has mentioned, for example, telephones, they are deregulated already. There is currently no need to licence the actual telephone handset and therefore dealers do not need a licence to deal in them.

HON J C PEREZ:

Except Mr Chairman that there are other parts of the law which talk about adequate equipment.

HON CHIEF MINISTER:

That is a different matter.

HON J C PEREZ:

Dealers will have to be guided by the equipment that can be used in the network.

HON CHIEF MINISTER:

That is a different issue. The hon Member has got to distinguish between licensing, something that one needs to go to the Licensing Department and get a licence saying "the Government of Gibraltar licences you for twelve months to use this and that bit of equipment upon payment of £10". Any equipment that needs that licence also requires the dealers to have a dealers' licence.

One cannot sell a bit of equipment that needs to be licensed under the Telecommunications Ordinance unless the person selling the equipment has a dealers' licence. That is going to be considerably more liberalised by leaving the Exemption Regulations to eliminate the licensing requirement from a lot of that equipment that presently needs licensing so that the dealers will not need a dealers' licence either.

The point that the hon Member has now raised is the slightly different question of the regulators' approval of apparatus. I think the hon Member is probably looking at section 26 which says that the Authority may prohibit the connection to a telecommunications network of such telecommunications apparatus as the Authority may consider can cause harm to that network. But the hon Member has got to distinguish between licensing issues and the regulator, which is not the Government, the regulatory authority being able to approve apparatus for use on the network so that the integrity of the network is not damaged. That is not a licensing requirement, that is an ordinary regulators-type of apparatus approval.

HON J C PEREZ:

But Mr Chairman in carrying out that function in practice the Authority would have to give landlines to dealers on the standard of apparatus that they would be able to import freely and sell without a dealers' licence. If we take the requirement of section 26 together with section 5(2) where there is powers for the authority to make known to consumers and purchasers a list of apparatus which is not allowed to be connected in the network, another point that arises is given that they cannot do so if it is considered to be prejudicial to the interests of a particular dealer, how can that be done even if the dealer is selling equipment which is not allowed in the network? That is to say, the authority is giving itself powers to be able to inform purchasers and customers that there is equipment that they cannot connect to the network but in doing so that message cannot be prejudicial to any person or persons and my question is, if there is a dealer selling equipment which cannot be connected to the network the provisions of that clause does not allow the authority to communicate. I am talking about section 5(2) read together with section 26 which the hon Member has read.....

HON CHIEF MINISTER:

Mr Chairman, two points arise from that intervention. I think that the hon Member is reading more into section 5 than he can read into it. Section 5 deals with the publication of information and advice whereas the power to disallow equipment to be used with the network if the regulator considers that that equipment can do harm to that network is a different thing. That is not guidelines or advice. It is only the guidelines or advice that cannot be prejudicial. That is not information. The Regulator, under section 26 has power to say without being affected whether it causes anybody damage or prejudice or not, is able to say "you cannot use that piece of equipment on the network because it will cause the whole thing to short circuit, or it is not compatible with billing systems" or things of that sort. Section 26 is unqualified as to whether it does prejudice to anybody. Section 5, which is the one that is qualified by the prejudice, relies simply to the publication of information and advice but the Regulator's powers to disallow the use of equipment of apparatus which he considers may cause harm to that network is not a matter of information and advice, it is a question of prohibition.

Mr Chairman, I would like to say something to the Committee about the provenance of this section. Under the European Union Directives there is a tight approval regime. Hon Members know that it is not lawful in Europe to use any equipment which does not carry the EC approval letters on it. That regime, curiously, was not made under telecommunications, or competition or liberalisation rules. It was made under free single market in goods principles and legislation. The hon Member knows that the freedom of movement of goods, the single market in goods as opposed to the single market in people, services and capital. The single market in goods does not apply to Gibraltar and there is presently litigation in the European Court of Justice to determine whether that view remains correct. That is the view that the

European Commission has since 1973, that Gibraltar is not required to transpose directives that relate to the Single Market in Goods. That view, that the Commission itself has always had, it is now questioning itself and it has chosen to question itself by bringing infraction proceedings in a test case. It was therefore thought inappropriate in those circumstances to replicate here the European Union apparatus-type approval rules because that would have been us bringing into our legislation single market directives which was thought might prejudice the argument of whether we were bound by them or not. My own personal view has always been that the fact that one does something which one is not obliged to do, the fact that one chooses to do it voluntarily, I would have thought is capable of prejudicing the legal issue of whether in fact one is obliged to do it. The fact that one chooses to do them freely is not, in my view, that one thinks that one is under a compulsion to do it but we have received legal advice to the contrary. Therefore, this section 26 is a local way of achieving the same result. In practice, the Regulator advises me that his intention is to approve all apparatus which is EU-type approved. The Regulator intends to use the section to approve all apparatus which is EU-type approved because what we do not want of course is to have to set up here the resources to check all the equipment ourselves. We do not have the technical expertise and technical resources to analyse and to assess every bit of equipment to see whether it should be allowed or not. The way this is going to operate in practice is that section 26 will be used in the same way as the single market in goods EU-type approval regime would have been used. Everything which is EU-type approved will automatically be allowed in Gibraltar and things which are not EU-type approved will not because to allow EU-type approved things would require our Regulator to technically strip down, access, every bit of equipment and see whether or not it is capable of causing harm to the network.

Clause 2 stood part of the Bill.

Clauses 3 and 4 stood part of the Bill.

Clause 5

HON J J BOSSANO:

Mr Chairman, in clause 5 in the publication of information it says "the Authority may, with the approval of the Minister, arrange for the publication of information in such a manner....." that it gives the consumers the information they require but at the same time they take into account, both the Minister in giving the approval and the Authority in taking the decision, the need that may exist to protect any matter which relates to the private affairs of an individual and then it goes on to say ".....where the publication of that matter would or might in the opinion of a Minister seriously affect the interests of the individual". I imagine this is not Community law, that it has to be in the opinion of a Minister. I would have thought that this was over because in fact if the Minister has the right to stop the information being made public or not because the Authority cannot move without the approval of the Minister then it seems to me that on the one hand we are saying in determining the balance of issues that he takes into account in giving his approval the Minister and the Authority are both required to take into account the provisions of sub-section (2)(a) and (b) which seek to protect the individual or a business. Then we dilute that protection by saying "in the opinion of the Minister" and therefore I am moving the deletion of the words "in the opinion of the Minister" where it appears in Sections 5(2)(a) and 5(2)(b).

HON CHIEF MINISTER:

Mr Chairman, I am advised that this legislation is drawn from the Telecommunications Act of 1984 in the United Kingdom. I am told that in keeping with the rest of this legislation it carefully shares out responsibilities between Government and regulatory authority because certain things are pure regulatory functions, other things are governmental policy functions. There is an overlap. Where there is an overlap the function is given to both and to give the Regulator by himself functions which do not necessarily extend only to regulatory matters would be to extend

his functions beyond regulatory matters and certainly we would not support the amendment.

HON J J BOSSANO:

Mr Chairman, I know that when I pointed out that I had not been saying anything about licences earlier the Chief Minister said "well then he must be going deaf", I have to say to him that he may be going deaf because I have not said anything at all about sharing out the functions of the Regulator and the Minister. I have said okay the Authority has to arrange for the publication and the Minister has to give approval. That is the division of powers between the two. In giving approval the Minister has to take into account whether somebody would be prejudiced but whether somebody would be prejudiced depends on a totally subjective opinion, the opinion of a Minister. It seems to me that one is diluting the protection of the individual by then saying that it is in the opinion of the Minister that the person is seriously prejudiced. It does not matter in whose other opinion it is, it is the opinion of the Minister that overrides everything else. What I am saying is the removal of the words "in the opinion of the Minister" would do nothing at all to alter the point the Chief Minister has made about the division of powers between the Authority and the Minister because the Minister would still have the power to approve or not approve what the authority may want to do in publication of information. I do not see why the words "in the opinion of the Minister" need to be there on top of the fact that he has to give approval. In moving the removal of the words "in the opinion of the Minister" absolutely nothing is being done to affect what the Chief Minister has said which is the separation of roles between the Minister and the Authority. I am not saying it should be in the opinion of the Authority. I am saying the words in the Ordinance are sufficient in themselves without having to add "in the opinion of the Minister" which seems then to weaken the protection that is being put initially.

HON CHIEF MINISTER:

Mr Chairman, if we can move on to another section and come back to that one. Before deciding finally whether there is any merit in the hon Member's point I just want to check the point against working papers to see how that formulation was constructed.

Clause 6

HON J J BOSSANO:

Mr Chairman, in clause 6, is it that the provisions of clause 6 apply to the functions assigned only to the Minister and not to the functions assigned to the Authority?

HON CHIEF MINISTER:

I may not be understanding the hon Member's point. The section does begin by saying "the Minister and the Authority may each, for the purpose of performing the functions assigned to or conferred on him by or under this Ordinance or Regulations made under it by notice in writing signed by him" I do not know whether the hon Member is misinterpreting the use of the word "him" to relate only to the Minister. I think the hon Member knows that in ordinary drafting technique a "him" is capable of meaning "her" or "it" but it clearly is intended to refer to the Minister and the Authority may each for the purpose of performing the functions assigned to or conferred on him, that does not mean conferred on the Minister. It is intended to mean conferred on each of them.

Clause 6 stood part of the Bill.

Clauses 7 to 10 stood part of the Bill.

Clause 11

HON CHIEF MINISTER:

Mr Chairman, my Colleague the Minister for Trade and Industry has given notice of amendment to Clause 11 and which I will move on his behalf. It is a simple point. The first word in line 3 of 11(1) says "section" and it should read "Ordinance". So that it should read "in such regulations as may be made under this Ordinance" not "in such regulations as may be made under this Section".

Clause 11, as amended, stood part of the Bill.

Clause 12

HON CHIEF MINISTER:

Mr Chairman, again in line 3 of 12(1) there is this reference to regulations made under this section which should read "regulations made under this Ordinance". The proposed amendment is to replace the word "section" with the word "Ordinance".

Mr Chairman I have another amendment to move in proposed section 12(2) which is to delete "a set of" and substitute with the words "principles and" in the first line. At the end of the sub-section to insert the words "such principles and conditions shall not be exhausted and may be added to in each specific grant of access and use". I will now read to the hon Members how that sub-section will read: "The Minister may by regulation prescribe principles and conditions subject to which the access and use referred to in sub-section (1) shall be granted, such principles and conditions shall not be exhausted and may be added to in each specific grant of access and use". Different principles and conditions may be applied to different instances of access and use to these lines.

Mr Chairman, in Section 12(5) where it says in the first line "the Regulations referred to in sub-sections (1) to (4) may without.....", it should read "sub-sections (1), (2) and (3)" each of them in brackets.

HON J J BOSSANO:

This provides in 12(1) that it is the duty of the Authority to make sure that the persons prescribed in the Regulation are given access by the provider of the network. Is it that we are saying that we are going to have regulations which can distinguish as between individuals? That is what it seems to be saying.

HON CHIEF MINISTER;

Different types of user of leased lines. Yes, the Regulations will set out the conditions under which leased lines have to be made available. Those conditions include cost, the way in which leased lines are to be made available and different types of users of leased lines may well be subject to different types of principles and conditions as to the terms that they are allowed..... I do not suppose it will be done by reference to the identity of the party but rather the nature of the business, the nature of the use to which he intends to put the leased line.

HON J J BOSSANO:

Mr Chairman, the use of the word "specific" in each specific grant gives the impression that it is not a generic condition saying if the leased lines are for banks, these conditions apply if the leased lines are for betting shops different conditions..... each specific grant gives the impression that we are talking about each individual case.

HON CHIEF MINISTER;

Each individual case of the hirer of a leased line, yes. Here we are not talking about retail consumers. Yes, Mr Chairman, it appears to have the effect that the hon Member is saying. It was a late requirement from the draftsman. Without checking I cannot even tell the hon Member whether it is something that has been

thought to be necessary for local purposes or something which is contained in the directive which was omitted from the draft but I can certainly check that point and see whether this formula mirrors the directive or whether it is something that the draftsman had said.

Clause 13

HON CHIEF MINISTER;

Mr Chairman, here I have got corresponding amendments so that in sub-section (3) "shall" shall be "may" because it is not mandatory and then after the word "prescribe" we insert "principles and" and the same phrase at the end.

Mr Chairman the proposed amendment to 13(5) is not necessary. As far as I can see the words are already in the Bill.

Clause 14

HON J C PEREZ:

Mr Chairman, section 14 seems to give powers to the Minister for pricing in certain areas. There are some areas which talk about affordability and then there are some areas where that power of pricing is placed on such matters as itemised billing, tone dialling, selective calls barring and number portability. My point is, is this pricing power related to what the public service provider must charge those that have access to the network or when we are talking about affordability is it that the Minister has the power to provide for a range of prices for service to users and is it only users where there is only one service given that competition would normally bring down prices or is it related to a restricted number of issues or a wider range of issues in terms of what the pricing for customers is as opposed to the pricing by the public service provider to those wanting access to the network.

HON CHIEF MINISTER:

First of all, Mr Chairman, let us not forget that we are talking here about enabling sections. All that the hon Member has described will actually be done through the regulations when they come. This section does not give the Minister power to do things. It gives the Minister powers to pass Regulations which Regulations will empower the Minister to do things. Subject to that caveat, Mr Chairman, the crucial phrase there is "fixed publicly available telephone services" which is a defined phrase which is intended to mean minimum type services. If the hon Member looks at page 156 in the definition a "fixed publicly available telephone service" means the provision to end users at fixed locations of a service for the originating and receiving of local and international calls includes the provision of voice telephony service and may also include that list of minimal services that are listed there, the emergency number, operator assistance, provision of directory services, the provisions of public pay-telephones and so on and so forth and they are thought to be the basic telephone service, anything else would be a sophisticated product and the Minister will be empowered to ensure that those minimum services are available to end users at a cost reasonably affordable by them. In other words, it is not reasonably affordable by the telephone company with an eye on its profit margins, reasonably affordable by the consumer.

HON J C PEREZ:

It is only that the provisions appear under the provisions of open network, there was some confusion in my mind whether this was only related to the network or related to the consumer as well. I am glad for the Chief Minister's clarification.

HON CHIEF MINISTER:

There is in section 14, Mr Chairman, two amendments one of which does not fall into the category of the previous one. In section 14(1) after the words "shall each have a duty to ensure

that" we want to add the words "subject as contained in such regulations as may be made under this Ordinance".

In section 14(2)(b) delete "conditions described in paragraph (a) are based; and" and inset "access and use referred to in subsection (1) may be granted; and".

Clause 15

HON CHIEF MINISTER:

One small amendment, Mr Chairman, and that is equivalent to the one in section 14. After "The Minister and the Authority shall each have a duty to ensure that" insert "subject to such regulations as may be made under this Ordinance, in Gibraltar, fair and effective competition....".

HON J J BOSSANO:

There has been no response from the Government on the point raised in the general principles of the Bill about the definition of the service. In 15(4) at the beginning on page 161 it says " telecommunications services means other than in section 15 services other than radio broadcasting or television broadcasting and then in page 181 in section 15(4) it says "in this section 'telecommunications services means services, other than radio broadcasting or television broadcasting". In the general principles it seems to me that in page 161 we are being told "except for the provisions in section 15" radio and television are not telecommunication services and then in section 15 we are told they are not included in section 15 either. That is not being amended?

HON CHIEF MINISTER:

Mr Chairman, the hon Member will remember that when he made this point at the first reading I thought that his point was unanswerable. I believe that it needs to stay I am told although I agree that sort of semantically the point that he is making is logical. There is a slight difference which I think is meaningless between the definitions in telecommunications services in the two sections but because each of these definitions is drawn from a different directive, one is the competitions directive and the other is the harmonisation directive, each of those directives is driven by a different directorate of the Commission because they have different responsibilities. There is a slight difference between the two definitions which I think is a meaningless distinction but because it is semantically there the draftsman has insisted that we keep the definition in each part of the Bill exactly as it is to be found in the separate directives from which these two definitions come. The difference is this, on page 161, "telecommunications services" are defined as other than in section 15 services other than radio broadcasting or television broadcasting or both, the provision of which consists wholly or partly in the transmission and routing of signals on telecommunications networks. In section 15(4) on page 179 it is marginally different. It says "other than radio broadcasting or television broadcasting or both the provision of which consists wholly or partly in the transmission or routing of signals....." so far identical, but then this one says "or both such transmission and routing on a telecommunications network". The definition in section 15(4) adds the words "or both such transmission and routing" and that is supposed to make a difference. I do not think it makes any difference at all but there are two directives with two different definitions relating to two different parts. It is all brought together under one Bill and there is a different definition in the directive dealing with harmonisation, there is semantically a difference. I do not know if the hon Member agrees that adding the words in the second definition "or both such transmission and routing" adds anything at all. I think it is implicit in the words "the provision of which consists wholly or partly in the transmission or routing of signals". That makes it clear that it applies to one or the other. To go on to say "or both such transmission and routing" seems to me complete repetition which adds nothing.

HON J J BOSSANO:

Mr Chairman, surely an inevitable consequence of that explanation is that the definition in page 161 must be defective because are we then saying that if somebody provides transmission of signals but not routing of signals, then he is not covered by telecommunications services definition and does not need authorisation?

HON CHIEF MINISTER:

I am saying that I believe that on a proper interpretation of those formulas they both mean exactly the same and therefore that the definition on page 179 is superfluously expansive and adds nothing to the shorter definition by four words. The extra four words to be found in section 15(4) adds nothing to the definition in section 2 but the draftsman has said to us that because they are that different, albeit that it is a distinction without a difference. That distinction is reflected in the directives. The draftsman feels that they slavishly wish to follow it in the legislation even though I cannot see that it is capable of meaning anything different in both sections. If the hon Member agrees that it is superfluous verbiage and has no meaning, I think we should on such a technical point agree to follow the draftsman's advice.

HON J J BOSSANO:

The only problem I have with that is that I do not think the point I am raising is being addressed by the technical response of the draftsman. I was not questioning whether it was superfluous. What I was saying is if I am being told in one part of the law that television and radio broadcasting are included and then I go to the part in which they are included and I am being told they are not included, then it is a question of what has radio broadcasting and television broadcasting got to do with the technical explanation that has been given on the two directives?

HON CHIEF MINISTER:

Radio and television broadcasting are not covered by any part of this Bill.

HON J J BOSSANO:

Yes, but Mr Chairman on page 161 we are being told that they are. The answer that the House has been given draws attention to the definition of routing and transmission and whether it is either/or or both the point that I am raising is that we are told on page 161 what is to be known as telecommunications services does not include GBC broadcasting except in section 15. Okay, so we accept now that in this law GBC broadcasting is not a telecommunication service except in section 15. So we go to section 15 and then we are told there that it is not included in section 15. Then, why is one told in page 161 to look at page 181 and then when I go to page 181 it says "television service means service other than radio and broadcasting"? What I am saying is, well surely what we ought to have is the deletion of section 15 on page 161 and the deletion of "other than radio and television broadcasting" on page 181 because we have a definition of telecommunication service which is inclusive of radio and television as predicted on page 161 but which does not materialise when we get to page 181.

The point that has been raised in response to the Law Draftsman's technical argument raises a separate issue, Mr Chairman, which is should not then the definition on page 161 in the light of what the Draftsman has said read "the transmission or routing or both" because if we are going to be defining it as narrowly as that and the Law Draftsman presumably is putting an argument which reflects how this legislation is expected to affect people when it is passed, then in fact the definition on page 161 of telecommunication service means inevitably that a service requires authorisation by definition if one is doing transmission and routing of signals. Whereas in section 15 the service is defined as being one where one provides either transmission or

routing or both. In the first one both is included but not one or the other on its own. That seems to be in flat contradiction to the other explanation.

HON CHIEF MINISTER:

No, Mr Chairman, it is not in flat contradiction to the other explanation, it is just the explanation of a different point that arises from the difference between the two definitions. The point that he is now making which I agree the hon Member did raise the first time that he rose and which I did not deal with in my response is that I believe that the hon Member's point is based on a misreading by him of the meaning and effect of the definition of telecommunications services at page 161. I believe that the hon Member is misreading the first definition in section 2 which reads: "Telecommunications services means, other than in section 15, services....." the word "services" is in between the two exemptions ".....services, other than radio broadcasting or television broadcasting or both, the provision of which.....". The way the hon Member is linguistically and grammatically able to read section 15 is "telecommunications services means, other than in section 15, services, the provision of which consists wholly or partly in the transmission and routing.....". Because the word "services" surrounded by commas is included between "other than in section 15, other than radio broadcasting or television broadcasting" it is not a circuitous double exclusion which writes it back in which I think is the point the hon Member was first making. I think the hon Member is overlooking the construction significance of the fact that the word "services" which relates to the main body of the definition is wedged between the words "other than in section 15" on the one side of it and "other than radio broadcasting or television broadcasting or both" on the other side of it so that it does not read "other than in section 15 other than radio broadcasting or television broadcasting or both". It would then have the meaning that the hon Member is saying that it would have. I am advised that as these two definitions stand, radio and television broadcasting are excluded from both definitions and the only distinction between the two definitions which I believe to be a distinction without a difference is this business of "or both transmission and routing" which I addressed, in the hon Member's view, unnecessarily in my first response to him.

Clause 15, as amended, stood part of the Bill.

Clause 16

HON J C PEREZ:

Mr Chairman, I think I have four points on section 16. The first one is on 16(1), can the Government say if companies providing call back services today have to apply for a telecommunications licence in order to continue to provide such a service?

HON CHIEF MINISTER:

Whether it does or does not have the effect, I do not know. I can tell the hon Member that there is certainly no policy intention that it should have that effect. I would lose no sleep if it did have the effect because those operations are causing havoc to the economic viability of our home grown industries.

HON J C PEREZ:

I cannot understand how the Chief Minister says that they are causing havoc and he comes to this House and boasts about the increase in the telephone services and I have to mention every year the increase in the payment of dividends of the telecommunications companies. If it were causing havoc GibTel would be bankrupt. That is causing havoc. But if GibTel is making a bigger profit every year despite call- back I cannot call that situation havoc. Let me say that the issue is not that one. The issue is that the clause talks about providing a telecommunications service in, from, within or through Gibraltar or establish or operate. The fact that they would be copying the licensing regime would not stop them from providing services, it just means that they would have to apply for a licence.

HON CHIEF MINISTER:

Mr Chairman, I am advised that it would call call-back services. The hon Member is mistaken in believing that everyone will get a licence. There is an ability in this legislation as there is in every other country to limit the number of licensees but the distinction between an authorisation and a general authorisation are clearly defined. The things which one can do on a general authorisation and the things which require a specific licence are clearly provided for in the law. The hon Member is uncharacteristically blasé with the commercial interests of GibTel and Nynex. He must also know that the effect of unfair commercial competition takes time to be reflected in the commercial results. I do not suppose he can draw any comfort from it, he might draw comfort from it in the reduction in profits for GibTel and Nynex were flowing to the consumer, but to the extent that it is flowing to outside telephone operators who provide no employment in Gibraltar, who pay no tax in Gibraltar on their corporate profits and who are just creaming the valuable telecommunications business and using the network which are maintained by Nynex, I am sure that the hon Member does not approve of that practice. All I meant to answer him when I got up the first time was that there was no particular policy drafting in this which reflected the Government's desire to catch call- back services. Given that this is drawn from the directive, if it does catch call-back services it is because the directive catches them and not because we have done anything designed to catch them.

Mr Chairman, I wish to move the following amendment, in section 16(7) after the words "the areas in respect of which he may" insert "impose conditions for –".

HON J C PEREZ:

Mr Chairman in section16(7)(j) is where it provides for the limitation of authorisations and that is where I think that in some areas that could be construed to mean to be contrary to the spirit of competition. In practice what does that mean, that the Minister may decide that a particular service should only require three authorisations and that those authorisations are put to tender? Or after he receives the third application he decides that there should be no more notwithstanding that people are able to apply and having met the criteria set out by the Ordinance ought to be able to be granted an authorisation. Can the Chief Minister explain that?

HON CHIEF MINISTER:

Mr Chairman, the hon Member should consider that (j) provides for the limitation of the number of authorisations in the form of individual licences. We are already in the realms of things that require a licence as opposed to the things which can be covered by a general authorisation. Things which fall into the category of general authorisations do not need individual licences, that is what a general authorisation means. It is instead of an individual licence. If somebody is in the nature of an activity which can be subject to the obtaining of an individual licence, the number of licensees that do that can be limited in number. This is the same all over Europe. The hon Member will be aware of the enormous fuss and interest that has been generated by auctions all over Europe for third generation licences and the Government decide how many licensees it wants in these areas and then some countries do what they call a beauty contest and other countries do an auction and auction them off to the highest bidder. We expect to do the same. I am not committing the Government at this stage. Our intention at the moment is that if additional licences are to be made available in any areas to the licensees that already exist it would be done by auction so that not only will it be a transparent process but indeed it will be a source of..... the sort of revenue, although I do not think we will be able to replicate the amount, but it is the equivalent of the money that the hon Members raised when they originally..... I think the hon Members did it with Nynex but not with GibTel or the other way around. Going out to tender and conducting an auction is more or less the same process but certainly unless we do it that way we cannot raise for the public exchequer what can be raised from further licensing not just to existing services but of new services and third generation category.

HON J C PEREZ:

Mr Chairman, it would seem to me that section 16(8) refers more specifically to broadcasting than to anything else. I am not sure whether it needs to be there to cover areas other than broadcasting but it would seem to me that the only issue covered here would be broadcasting and it is not applicable unless, of course.....

HON CHIEF MINISTER:

I am advised that this is not actually television and radio broadcasting as such. This is intended to catch such modern convergence products as videos on demand, music videos, which it is envisaged in the next generation will be obtainable down third generation telephone networks. This does not relate to the radio and television broadcasting but to audio visual matter that will be deliverable through the information super highway type things.

HON J J BOSSANO:

In relation to 16(6) which says "Sub-section (1) shall not apply to such persons as the Minister after consultation with the Authority may by regulation prescribe". I find it difficult to see how we are going to make regulations for individuals who are going to be exempt from the requirements and that seems to be contrary to the concept of equal treatment in terms of competition.

HON CHIEF MINISTER:

The hon Member is misreading this provision. The point that he makes may arise depending on what the Regulations eventually say in the regulations but all that this is saying here is that in creating a prohibition from doing things without a licence, the regulations that are made can contain exemption provisions.....

HON J J BOSSANO:

.....for individuals. It says it shall not apply to such persons as the Minister may prescribe.

HON CHIEF MINISTER:

Mr Chairman, the hon Member rushes to presume that Ministers abuse this, but that is the normal standard phrase. For example, if we are going to exempt Police Officers or the Ministry of Defence in relation to such..... that is how it is normally done. There is no other generic formula for doing it. I do not think the hon Member is reading too much into the use of the word "persons". It is a very standard phrase. It might easily read "sub-section (1) shall not apply to such cases as the Minister after consultation by regulation prescribes". I think the hon Member is interpreting the word "persons" to mean that there can be capricious exemption of individuals as opposed to categories.

HON J J BOSSANO:

That seems to be what we are providing in the law. This is why I am questioning it. Whether it is actually used capriciously or not we appear to be creating the enabling provisions. I can understand sub-section (5) which says "the Minister may determine that a particular kind of telecommunication service will not be licensed notwithstanding the provisions of section 1". I can understand that one can say this kind of service will not need a licence and then whoever wants to provide that service knows that he does not need a licence. It seems to me that in sub-section (6) in theory one could get two identical cases of a service by different people and decide that one needs a licence and the other one does not.

HON CHIEF MINISTER:

Every power is capable of being abused in a corrupt fashion. But it has never been the style of Parliamentary legislation that

nothing that is capable of being corruptly abused, there is a presumption that people will not corrupt their powers. This wording is taken from the directive. The definition "persons" is defined. It means individual or legal entity. There is a difference to be drawn between the sort of services from which everybody is exempt for licence and that would be dealt with in the Exemption Regulations and the sort of services that generally a licence is required but certain persons are exempted, not because they belong to one political party or another or because the Chief Minister or the Minister or the Regulator likes them personally or not but because of circumstances relating to that individual's use of that particular equipment which would normally need licensing. The laws of Gibraltar are riddled with references to the powers of exemption in favour of persons.

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

Clause 17 and 18 stood part of the Bill.

Clause 19

HON J J BOSSANO:

Mr Chairman, in Clause 19(2) it says "the Land Acquisition Ordinance shall apply to any compulsory acquisition under this Ordinance as if the person were the Government and the acquisition were a compulsory purchase of land under that Ordinance". Surely, this cannot be an EEC directive requirement that we treat private providers of telecommunications services with the same power to.....? It would seem to me that if a company needs land in order to provide the service then the land ought to be obtained by the Government and provided to the company. I do not see why we need to change to make this provision. I hope that our legislation is not riddled with provisions that says that we can treat anybody as the Government for compulsory acquisition of land.

HON CHIEF MINISTER:

The provision is taken from the Telecommunications Act and I think the hon Member is misreading. The point he is making he might make in relation to 19(1) but not in relation to 19(2). Section 19(2) is there for the protection of the person whose land is compulsorily acquired. What 19(2) says and means is that if a telecommunications network provider exercises his power to compulsorily purchase land for the purposes of compensating the person whose land is acquired the telecommunications network provider will begin to be in the position of the Government under the Land Acquisitions Ordinance and in that Ordinance the Government are the payer of compensation. The principle that applies to the amount of compensation that the Government have to pay when they compulsorily acquire land has also got to be met and paid by telecommunications network providers when they use the power in 19(1) to acquire land. So 19(2) is there simply to say that the victim of the acquisition has to be compensated in the same way and by the same procedures. That is the importance of as if it were the Government because the regime that applies to the Government under the Land Acquisitions Ordinance is not just the price setting and the ability to acquire but also the price setting formula and the intervention of the Courts to protect the victim of the acquisition. Section 19(2) is there to make sure that in its dealings with a telecommunications provider the owner of land is in no worse position than if the acquirer was the Government under the Ordinance. If the hon Member has a point of principle to make as to whether he thinks that telecommunications network operators should have the power to acquire land or not, that point will arise under 19(1), 19(2) is just mechanics. Mr Chairman, the provision is taken from the Telecommunications Act. It is the equivalent provision when the provider of the telephone network was a Government Department and it was thought necessary that in the interests of the provision of a public service providers should have access to land on compensation returned. In the context of privatisation and

liberalisation that same principle has been extended for the benefit of providers of the same service, with the same public interest needs but providing the services from the private sector. I do not think the hon Member is right when he says that it should be the Government that acquires land for the benefit of the private network provider. The safeguard comes in the fact that the Government, through the Minister, have to approve. The telecommunications network provider, although eventually would have the right to acquisition in his own name and not the Government having to do it on his behalf, but he cannot do it exercising his own judgement alone. The Minister may, after consultation with the authority, authorise in writing a network provider to have recourse to this. There is protection both in the fact that the network provider first needs the authority of the Minister who first has to consult the authority, presumably to see whether it is necessary in the provision of the network and then, even if the Minister does authorise the acquisition, the owner of the land is then protected through all the mechanisms of the Land Acquisition Ordinance as if the acquirer was the Government.

Clause 19 stood part of the Bill.

Clauses 20 to 23 stood part of the Bill.

Clause 24

HON J C PEREZ:

Mr Chairman, it is a point I raised when we discussed the general principles of the Bill and that is that section 24 applies only to persons engaged in the operating of a public telecommunications network. Should the provisions now not apply to all those other persons who by virtue of having access to the network under the open network provisions of the Bill be in a position to do a. b. and c. all of which are offences? This is copied from the Public Utilities Ordinance but it refers to the old regime where there was only one public provider. Here, if there are going to be people who have access to the network, the employees of those persons ought to be covered by the same provisions as the employees of the providers of the public telecommunications network.

HON CHIEF MINISTER:

The hon Member may be right. I thought he was making the wider point of whether this should respect the privacy from intervention by members of the public. That is a different issue. The areas such as that are covered by the Data Protection legislation that will follow. As I understand the point that the hon Member is making, a person engaged in the operating of a public telecommunications network sound to the hon Member as if it is the owner and operator of the network. That network may actually be accessible to some other company which is providing a telecommunications service across somebody else's network to which it has access under the Access Regulations and query therefore whether that service provider, which is providing a service across somebody else's network, is a person engaged in the operating of a public telecommunications network. If he is, he is covered. If he is not, and that is the scenario that the hon Member is envisaging then he is not covered.

I am advised that the hon Member's point would be saved if it said "a person engaged in operating a public telecommunications network or providing public telecommunications services". Anyone who is accessing or using..... Hon Members should remember..... it is not the point that the hon Member is making now but what one can do to somebody else's network is not just access it but use it as well. The concept of use and access of somebody else's networks are different things so the point that he makes to the extent that it is good is good for both access and use but both are covered by provision of public telecommunications services because anyone who is either accessing or using somebody else's network is providing a public telecommunications service. I do not know if the hon Member wants to move the amendment himself or whether he would be content that I do. Mr Chairman, amend section 24 by adding after the word "network" the words "or providing public

telecommunications services" and delete "of £500" and insert "at level 3".

Clause 24, as amended, stood part of the Bill.

Clauses 25 to 27 stood part of the Bill.

Clause 28

HON J J BOSSANO:

Mr Chairman, may I just point out that in clause 28, we have been told by the Government that they have chosen to bring the existing Wireless Telegraphy Ordinance into this Ordinance but it could just as easily have been kept separate. Of course, in the Explanatory Memorandum there is a one line explanation of what it is doing here and it says that Part 4 incorporates and updates what used to be the Wireless Telegraphy Ordinance. We cannot see what updating unless the fact that the changes have been brought in at a later date is sufficient to describe it as updating. Updating would normally mean bringing it up to date in the sense of removing obsolete provisions or bringing in provisions which manifestly are an improvement of what is there. One of the things that there is in the existing Ordinance is that the Wireless Officer issues licences and keeps a register. Here in section 28 we are providing that the Minister issues the licences and then the authority keeps a register of the licences issued by the Minister. Why is this considered to be an updating of the Ordinance that one entity should issue licences and somebody else registers the licences issued and not the same entity as it is at present?

HON CHIEF MINISTER:

Because the idea is the whole of administrative aspects in relation to licensing will actually be done by the Regulator. The hon Member may have noticed in this section that there is a power for delegation from the Minister to somebody else to do the question of the licensing under Part 4 and the intention is to delegate the Minister's functions under Part 4 to the Telecommunications Regulator so that all the administration in relation to telecommunications is there without loss of the Minister's status as the Licensing Authority. The Wireless Officer as such, somebody in the Post Office issuing licenses, disappears altogether now. The figure of the Wireless Officer is now replaced by a two tier: one is a Licensing Authority which is the Minister and the other is the Regulatory Authority which is the telecommunications regulator whereas before the Wireless Officer was both the licensing authority and the regulator but they will be records of the Licensing Authority. The fact that they are delegated is neither here nor there.

HON J J BOSSANO:

We believe the Minister has the power to control the situation already in the existing provisions which were brought in in 1998 where it was the Minister and not the Governor that appoints the Wireless Officer. If we have the provision for a Wireless Officer there is nothing to prevent the Minister from appointing the Authority as a Wireless Officer but then one would have the person issuing the licences and the person keeping the register of the licences that have been issued as being the same entity which it seems to me we are..... having heard all the arguments for separating it we are now being told is going to be what has been separated is going to be rejoined by delegation.

HON CHIEF MINISTER:

No, Mr Chairman. Certain administrative functions on behalf of the Minister yes. The Wireless Officer ceases to exist the moment that we legislate this Ordinance and simply for the Minister to keep and have to have the bureaucratic machinery to keep a record of licences the hon Member can describe it as he has described it. I think he is going too far in separating and then linking by delegation. It is a purely administrative function, keeping a list of licensees which the Regulator has to keep any way for his own regulatory purposes. I do not think it alters the separation.

HON J J BOSSANO:

Mr Chairman, the law now says that any person may be appointed by the Minister to be the Wireless Officer. As far as we are concerned the existing Wireless Telegraphy Ordinance says "A Wireless Officer means a person appointed as such under section 3". Section 3 used to give the power to the Governor. In 1998 we agreed that that power should be held by the Minister. So the Minister, without changing anything can use the existing law to say "I appoint the Regulator as the Wireless Officer". What we then have is a situation where we change the law so that we say "no, no, there is no Wireless Officer any more so the Minister is now the one that issues television licenses and the Authority is the one that has to keep the register of the licences that have been issued to every television set in Gibraltar by the Minister". Since that is an administrative function, what the Minister will do is he will delegate what we are telling him in the law he has to do, to the Authority so the Authority issues the licences and keeps a register which is what is happening before we changed the law. We do not agree with this. We think this is totally unnecessary and in fact we are doing one thing in the law which can be reversed as a matter of policy. The delegation can be revoked whereas in fact there is within the existing provision of the law, without these changes, a perfectly satisfactory way of ensuring that we continue with the system that we have got at the moment which is that the register is kept by the licence issuer which makes sense, which is what it is intended to continue to happen but we change the law to say it is not what is going to happen.

HON CHIEF MINISTER:

Mr Chairman, the hon Member is aware surely that the Wireless Telegraphy Ordinance and the 1998 one are repealed on the passage of this. Then he can vote against it, nor can he assume that all the delegation will be to the regulatory authority. For example, one idea being mooted is that the power to issue television licences should be delegated to GBC and therefore the hon Member should not assume that there is a general power of delegation and it may be exercised in favour of different persons depending on the nature of the licence. I say this only because the hon Member used television licences as an example and I accept it was only an example and therefore the delegation may be in favour of different..... indeed the Minister could delegate if he decides that there is a function that he wishes to keep within his Ministry, he could delegate officers within his own Ministry to provide some of these services. Therefore, Mr Chairman, I do not think that this is a relatively trivial administrative matter and I do not think it raises any general issue of principle that would justify an amendment.

Clause 28 stood part of the Bill.

Clause 29

HON J J BOSSANO:

Mr Chairman, in the definition in 27(1) it says "telecommunications means the emitting or receiving over parts not provided by material substance constructed and arranged for the purpose of electro-magnetic energy which either serves for conveying of messages or is used in connection with the determination of a position bearing or distance". That is the definition that there is at present in the Wireless Telegraphy Ordinance of what is wireless telegraphy. In fact, what we are doing here is changing the label but not the content. However, in 29(1) it seems to me that there is the inclusion which appears to be quite deliberate because that is the only difference that there is between 29(1) and 5(1) in the Wireless Telegraphy Ordinance which reads: "No person shall establish or use any station for wireless telegraphy or keep or install.....". If we look at 29(1) we see that 29(1) is the exact replica of 5(1) except that the words "shall use in Gibraltar the electro-magnetic spectrum or" have been inserted. Consequently the insertion there of the licensing requirement must, we assume, be a policy decision which is quite deliberate. We do not think it has anything to do with EEC law and we think it is in flat contradiction with the definition in 27(1) because in 27(1) we are limiting the licensing requirement to those using the electro-magnetic spectrum for a particular

purpose, for conveying messages or for establishing the position, bearing or distance or gaining information about the presence, absence, position or motion of any object. In 29(1) we are making it universal. If it is any use whatsoever of the electro-magnetic spectrum that requires a licence then the narrower definition does not arise whatever one uses it for. I am not absolutely clear what the use of the electro-magnetic spectrum means because presumably if it is being used for everything other than sending of messages does it mean that if I switch on a microwave I need a licence from the Government to do it even though I am not sending any messages because that is part of the electro-magnetic spectrum?

HON CHIEF MINISTER:

I am advised that the electro-magnetic spectrum is everything which basically does not use a wire or some physical channel.

HON J C PEREZ:

Mr Chairman, the electro-magnetic spectrum includes electric waves, visible light, ultra violet, x-rays, gamma rays, cosmic rays and infra red other than radio waves. That is the whole scope of the electro-magnetic spectrum.

HON CHIEF MINISTER:

The hon Member will have noticed that it is not that section 5(1) before, in the Wireless Telegraphy Ordinance, said nothing. It used to say "no person shall use in Gibraltar the radio spectrum" and it now says "no person shall use in Gibraltar the electro-magnetic spectrum". Obviously the electro-magnetic spectrum is much wider than the radio spectrum and the radio spectrum is part of the electro-magnetic spectrum but the electro-magnetic spectrum is much wider and includes those parts of the spectrum which are used by other more advanced technologies, infra red, light, microwaves, all sort of things which now become licensable under the provisions of this legislation.

HON J C PEREZ:

The only thing that continues to be licensed in the United Kingdom are the radio waves. The radio frequency spectrum is the only thing that the radio telecommunications agency in the UK continues to regulate. It does not regulate the infra red as the hon Member suggested this morning or any other area of the electro-magnetic spectrum and it continues to guide itself by the Telegraphy Act in the UK which does not mention the electro-magnetic spectrum. It continues to mention the radio frequency spectrum. If we want to do here something more than is being done in the UK we want to know what we are doing and whether we are capable of doing it and whether it is right that we should do it. I am telling the hon Member that according to the radio telecommunications agency the agency does not administer or regulate infra red and has no reason to believe that it is a scarce resource. This is what happens in the UK.

HON CHIEF MINISTER:

Mr Chairman, the widening of the spectrum that requires licensing in Gibraltar away from the historical provision which was the radio spectrum to the much wider electro-magnetic spectrum is not actually achieved by this Bill. It was done by an Ordinance of 1997 to which I do not recall the hon Member raising any objection. What happened in 1997, even though the whole of the spectrum was widened, was it continued to retain the label radio spectrum technologically incorrectly but the spectrum that required a licence was widened to the electro-magnetic spectrum in 1997 and it continued to be called the radio spectrum wrongly in scientific terms. What this is now doing is that it is changing the labelling and calling the electro-magnetic spectrum the electro-magnetic spectrum and not continuing to refer to it as we have been doing since 1997 in our legislation wrongly referring to the electro-magnetic spectrum as the radio spectrum. So the 1997 Telecommunications (Amendment) Ordinance widened the spectrum to include everything but continued to refer to it as the radio spectrum even though the definition was the wider electro-

magnetic spectrum. All this does is update the language to make it accurately reflect what the law already provides.

HON J C PEREZ:

The Chief Minister will recall that in the general principles of the Bill I raised this. I did not raise it in 1997 precisely because it was mentioned in a recent case in Court and judgement was delayed. I thought we ought to look at it closely. Despite the fact that the electro-magnetic spectrum is much wider my information is that in the United Kingdom we continue to regulate the radio frequency spectrum only and that perhaps in the future some of the other areas might be regulated but they are not regulated now. Neither is infra red regulated in the UK.

HON CHIEF MINISTER:

The hon Member will not be able to judge the full impact of this until he has seen the Exemption Regulations because he will remember that I told him this morning that many things which are presently licenseable will be included in the Exemption Regulations as no longer being licenseable. We are having this debate on this legislation as if it were a debate on the substantive provisions and we keep on reminding each other that this is actually a debate on enabling legislation, most of which is regulation-providing. But Mr Chairman I am surprised that the hon Member is himself so surprised by the decision of the Government back in 1997 to broaden the spectrum for licensing purposes.

HON J C PEREZ:

I am only explaining to the Chief Minister that it was not raised in 1997 and it was raised recently on the introduction of this Bill because since 1997 and before the Bill came to the House it was mentioned as part of a judgement in the case of GibNet and there were things said there that ought to be taken into account in looking at the Bill now. That is the only reason why it has been raised now and not in 1997.

HON CHIEF MINISTER;

All right, Mr Chairman, but I cannot tell the hon Member whether this provision responds to that case or whether it is there before that case. The decision to licence the whole spectrum I think pre-dated the case in question. The actual provision to broaden the spectrum and not to keep it within the old radio spectrum for licensing purposes I am advised derives from advice to drop the upper limits of the frequencies used within the old definition of the Wireless Telegraphy Ordinance and this advice was first given to the Government in a letter dated 4th October 1994 from the Radio Communications Agency itself who had been asked on behalf of the then Law Draftsperson for advice on amendment to the Wireless Telegraphy Ordinance. In effect what the 1997 legislation brought to the House by the then Minister was basically to incorporate the advice which the hon Members had themselves sought and obtained from the Radio Communications Agency as far back as October 1994. I make no particular use of that point except that it goes back quite a long time, the mooting of whether Gibraltar should drop the upper limit on the definition of statute for licensing purposes and this appears to have been advice that originates actually in the very same Agency that he is now quoting from in that letter.

HON J J BOSSANO:

Mr Chairman, I do not think the point that I was raising has been addressed because in fact the insertion of the words in 29(1) "shall use in Gibraltar the electro-magnetic spectrum or" takes it away from the purpose. The point is that saying in this section that one needs a telecommunications licence for things other than doing telecommunications as already defined in 27(1), if one uses an electro-magnetic spectrum to send or receive messages then one needs a telecommunications licence is fine, whether we agree or we do not is a separate issue. It is clear and it is consistent, but then if one says that if one uses it to send messages or if one uses it for anything else one needs a licence. If one needs a licence for whatever one uses it for first of all I think it is a nonsense piece of provision, frankly, because on the

face of it it covers every conceivable thing that one could use the electro-magnetic spectrum for and then presumably one will have to have an almost interminable list of exemptions to take them all out again. It is going to be as long as the Encyclopaedia Britannica by the time one finishes finding out everything that is covered by the electro-magnetic spectrum from hair dryers to cookers. It seems to me that those words are redundant. It would seem to me that what the Government are seeking to achieve is already fully covered by the provisions which says one needs a telecommunications licence to use the electro-magnetic spectrum to conduct telecommunications which is what one is doing by what one has got in 27(1) and in 29(1) without those words.

HON CHIEF MINISTER:

The hon Member will have noticed that except for this point the fact that the words radio spectrum are now replaced by electro-magnetic spectrum, the rest of the section is in similar language.

HON J J BOSSANO:

It is identical except for a change in the labels. The section says "no person shall establish or use any station for telecommunications" where before it said wireless telegraphy. The amendment would read, delete the words "wireless telegraphy" and insert the word "telecommunication". But by introducing after the word "person" which does not exist in the present provision "shall use in Gibraltar the electro-magnetic spectrum or" the rest which is there what this law is saying, as far as I can tell, that anybody in Gibraltar that wants to use the electro-magnetic spectrum for anything in Gibraltar needs a telecommunications licence to do it unless the Regulation has been passed excepting that particular usage. This is not about the part of the spectrum, this is about the use to which the spectrum is being put and it seems to me a nonsense to say that we are legislating that even if the use that one is making of the spectrum is cooking as opposed to telecommunicating, until such time as regulations are made to except cooking one needs a telecommunications licence to cook using the electro-magnetic spectrum.

HON CHIEF MINISTER:

That is what the law presently says of the radio spectrum.

HON J J BOSSANO:

How much do you cook on a radio for heaven's sake?

HON CHIEF MINISTER:

Mr Chairman, I think the hon Member cannot be that silly, he cannot be thinking that the spectrum is the radio itself. The radio spectrum is just a part of the wider spectrum. The hon Member misquotes from the existing law when he suggests that it begins at the equivalent of establishing or using or both any station for telecommunication. The present section 5 which presumably the hon Member has in front of him reads "no person shall use in Gibraltar the radio spectrum or establish or use any station for wireless telegraphy". The words "no person shall use in Gibraltar the radio spectrum or establish or use....." are replaced with the words "no person shall use in Gibraltar the electro-magnetic spectrum or establish or use.....". The only change is that the reference to radio spectrum is replaced by a reference to the electro-magnetic spectrum and that is semantic because the change was actually brought in in 1997, not by this. All we are doing here is changing the label.

HON J C PEREZ:

The Chief Minister can say that it is changing the label but the label has a significance. Or is he saying that the radio frequency spectrum and the electro-magnetic spectrum are one and the same? If so, why need to change the label? The Chief Minister is widening the scope and that is why we are saying that whereas before there was no problem today what the legislation is saying that for any electrical equipment like a cooker, a refrigerator, one

is using the electric spectrum which is part of the electro-magnetic spectrum and this Bill is prohibiting the use of that without a telecommunications licence which the Chief Minister agrees is ridiculous. He is telling us that what we are now going to do is look at everything that ought not to be regulated by having changed the label and have a list of exemptions made under the regulatory power. It is crazy Mr Chairman.

HON CHIEF MINISTER:

The Chief Minister is not crazy and what is now clear is that the hon Member has not understood what I have explained to him on several occasions. First of all I assume it was only a slip of the tongue when he suggested that an electric wire is part of the electro-magnetic spectrum. I do not hold him to it. An electric cooker that is plugged in is not part of the electro-magnetic spectrum. Secondly, the hon Member is wrong, I will explain it to him a fourth time, if he thinks that we are now changing the definition of the spectrum. When we legislated in 1997 the changes that I have told him we legislated, that law redefined the spectrum. We are not achieving anything of substance now by changing the word "radio spectrum" to "electro-magnetic spectrum". The 1997 law which made the whole spectrum licenseable itself defined the extended spectrum to which it applied to include the whole electro-magnetic spectrum. The only thing that the 1997 law did which this law did not do which this law is now doing is going on to say ".....and this shall be called the 'electro-magnetic spectrum'". It continued to say ".....and this..." "this" being the electro-magnetic spectrum, "....will be called the radio spectrum". All this is doing is giving the right semantic label, the right scientific name, to what was already achieved in 1997 which was, firstly, the making of the whole electro-magnetic spectrum licenseable and, secondly, defining what the whole of the electro-magnetic spectrum actively is in fact. I hope that the hon Member now understands that this is not widening the law of Gibraltar as to what requires licences and what does not. I cannot think of any other way of explaining it to the hon Member.

Clause 29 stood part of the Bill.

Clauses 30 to 42 stood part of the Bill.

Clause 43

HON CHIEF MINISTER:

I would like to amend to make the existing section 43 become 43(1) and add a new subsection (2) that would read:
"43(2) This section shall not apply to telecommunications equipment for use in the service of Her Majesty or on foreign men-of-war or service aircraft".

HON J C PEREZ:

Mr Chairman, the Chief Minister knows that where we object on this part of the Bill is that the decision of whether there is an emergency or not should be in the sole opinion of one Minister and we voted against the whole of Clause 4 but that the Chief Minister should know that on this particular point that is the objection that we raised at the time of the general principles of the Bill.

HON CHIEF MINISTER:

I should record, for the benefit of prosperity, in the same way as the hon Member has done, that we disagree with his objection because in the United Kingdom the decision is also made by one sole Minister, namely the Minister for Trade and Industry and I do not see that what is proper for Ministers in the United Kingdom to decide becomes improper simply because it is a Minister in the Government of Gibraltar. It is well established that these decisions are made throughout Europe by a Minister and therefore the Government believe that the hon Member's point is entirely without merit.

Clause 43, as amended, stood part of the Bill.

Clauses 44 to 53 stood part of the Bill.

HON CHIEF MINISTER:

Mr Chairman, I seek to amend the Bill by adding a new section 54. The hon Members will remember that at the Second Reading I pointed out that the Government wanted to put an overriding clause that insulated the Minister and the Regulator from the obligation to do things or omit to do things which he was rendered physically incapable of discharging. I did not think it was right for us in this House to place any Minister or any official in a position where he is in breach of statutory duty in respect of things that he lacks the physical wherewithal by means of the behaviour of another Member State. I therefore would like to add a new section 54 to read:

"54. Notwithstanding any provision herein, or in any Regulations made hereunder to the contrary, neither the Minister nor the Authority shall have a duty or obligation to do, omit to do, ensure or prevent any act or thing, nor any other duty or obligation, which he is prevented or impeded from doing, omitting, ensuring or preventing in reasonable and usual manner and terms by the actions of another Member State and circumstances outside the control of the Minister, the Authority or the Government."

HON J J BOSSANO:

We support the amendment, of course.

New section 54 was agreed to and stood part of the Bill.

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

HON CHIEF MINISTER;

Mr Chairman can I suggest that we return to section 5? The hon Member raised whether the reference to "in the opinion of the Minister" was necessary in subsection 2(a). Upon a consideration of the text I do not think it is necessary in either subsection 2(a), 2(b) or in the preamble to 2. The only reference to the Minister, I believe, should be at the very first reference to the Minister, "the Authority may, with the approval of the Minister arrange for the publication....." and once the Minister has given his approval he gives it to the whole text. There ought not to be any references to the Minister in any other part of that section. I am happy to propose that amendment or if the hon Member wants to propose it, to support it, the deletion of the references to "the Minister and" in the second line of subsection (2) and also the words "in the opinion of the Minister" in (a) and (b) where they appear. Only what the Minister does is approve the publication in the first instance. This is one of the ones that we had passed.

I am proposing an amendment along the lines proposed by the Leader of the Opposition but actually going further than his amendment. By deleting in the second line of subsection (2) the words "the Minister and", in (a) and (b) of subsection (2) the words "in the opinion of the Minister" in the two places in which those words appear.

Clause 5, as amended stood part of the Bill.

Mr Chairman, in respect of clause 6, I think perhaps there are some amendments that we can agree across the floor. The point that we both agree on is that "on him" and "by him" might lead the reader to believe that it only relates to the powers of one of them. If it were to read "the Minister and the Authority may each, for the purpose of performing the functions assigned to or conferred respectively upon them by or under this Ordinance or Regulations made under it, by notice in writing signed by the Minister or the Authority as the case may be" it would make it clear that the whole regime applies to both of them. I think that would eliminate the ambiguity and not lead to a matter of drafting technique. Therefore, what I propose is that the words "on him" where they appear in the second line of section 6(1) be deleted and replaced by the words "respectively upon them" and that the words "by him" in the third line of subsection (1) be deleted and replaced with the words "the Minister or the Authority as the case may be".

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

The amendments that I proposed to sections 12(2), 13(3) and 14(2)(a) in each case by adding the words "such principles and conditions shall not be exhausted and may be added to each specific grant of...." are amendments that have been introduced at the last minute by the Draftsman. I have not had what I consider to be a necessary and satisfactory reason why those words should be added. They are not to be found in the directive and I would propose to withdraw those three amendments. If at some future date I get a satisfactory explanation for them which renders it necessary to include them we will bring amending legislation but on the basis of the information that I have been given I cannot explain to the hon Member why those words are necessary. I think the proper thing to do is to withdraw the amendment. But can we just go through them one at a time because in 12(2) there are amendments which need to be done so in 12(2) we carry on with the amendment to delete the words "a set of" and add the words "principles and" instead. In 12(5) delete the words "to (4)" and insert "(2) and (3)". In 13(3) we continue with the substitution of "may" instead of "shall" and by adding after the word "prescribe" the words "principles and". The amendment in 14(2)(b) proceeds because that is unrelated to the point that I am now conceding.

To summarise, in 12(1) there is the substitution of "Ordinance" instead of "section". In 12(2) there is the substitution, instead of the words "a set of" the words "principles and". In 12(5) (1) to (4) becomes (1), (2) and (3). In 13(3) the word "shall" becomes "may" and after the word "prescribe" we add the words "principles and". In 14(1) after the words "ensure that" we are adding the words "subject as contained in sub regulations as may be made under this Ordinance". In 14(2)(a) there is no amendment at all. In 14(2)(b) the words "conditions described in paragraph (a) are based" are deleted and substituted by the words "access and use referred to in sub-section (1) may be granted;".

Just for the benefit of the Opposition Members, what I am doing is withdrawing all in the three places where I have sought to introduce them, this formula about "such principles and conditions shall not be exhausted and may be added to in each specific case".

Clauses 12, 13 and 14, as amended, stood part of the Bill.

The only point that remains was the Leader of the Opposition's point about Level One is £100; Level Two is £200; Level Three is £500; Level Four is £2,000 and Level Five is £5,000. Those are to be found in the Schedule to the Criminal Procedure Ordinance. It should therefore be amended to read "Level Three".

Clause 24, as amended, stood part of the Bill.

THIRD READING

HON ATTORNEY-GENERAL:

I have the honour to report that the Telecommunications Bill 2000 has been considered in Committee and agreed to with amendments and I now move that it be read a third time and passed.
Question put. The House voted.

| | |
|---|---|
| For the Ayes: | The Hon K Azopardi |
| | The Hon Lt-Col E M Britto |
| | The Hon P R Caruana |
| | The Hon H Corby |
| | The Hon Mrs Y Del Agua |
| | The Hon J J Holliday |
| | The Hon Dr B A Linares |
| | The Hon J J Netto |
| | The Hon R R Rhoda |
| | The Hon T J Bristow |
| Abstained: | The Hon J J Bossano |
| | The Hon Miss M I Montegriffo |
| | The Hon J C Perez |
| | The Hon Dr R G Valarino |

Absent from the Chamber: The Hon J L Baldachino
The Hon Dr J J Garcia
The Hon S E Linares

The Bill was read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that the House do now adjourn to Monday 20th November 2000, at 10.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 1.30pm on Monday 23rd October 2000.

## MONDAY 20TH NOVEMBER, 2000

The House resumed at 10.30 am.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC – Chief Minister
The Hon K Azopardi – Minister for Trade, Industry and Telecommunications
The Hon Dr B A Linares – Minister for Education, Training, Culture and Health
The Hon J J Holliday – Minister for Tourism and Transport
The Hon Lt-Col E M Britto OBE, ED – Minister for Public Services, the Environment, Sport and Youth
The Hon H A Corby – Minister for Employment and Consumer Affairs
The Hon J J Netto – Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social Affairs
The Hon R Rhoda QC – Attorney-General
The Hon E G Montado OBE – Financial and Development Secretary (Ag)

OPPOSITION:

The Hon J J Bossano – Leader of the Opposition
The Hon Dr J J Garcia
The Hon Miss M I Montegriffo
The Hon J C Perez
The Hon S E Linares

ABSENT:

The Hon J L Baldachino
The Hon Dr R G Valarino

IN ATTENDANCE:

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

## MOTIONS

HON CHIEF MINISTER:

I have the honour to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the motion standing in my name.

Question put. Agreed to.

HON CHIEF MINISTER:

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

"This House calls on Her Majesty's Government:

(1) to provide to the Gibraltar Government a copy of the letter received by the Foreign Secretary from the Spanish Foreign Minister requesting to have an influence over military facilities in Gibraltar;

(2) to reply without further delay rejecting the Spanish request as wholly unacceptable in language which is clear and unambiguous and to provide a copy of that reply to the Gibraltar Government,

and requests the Government to write to the Foreign Secretary informing him of the terms of this motion".

Mr Speaker, the Gibraltar Government detected in the Spanish press at the end of September and beginning of October, reports to the effect that the Spanish Foreign Minister, Señor Pique, had sent a letter to the Foreign Secretary in which it was proposed to study formulas which would permit Spain to maintain "a certain control" over the activities in the Naval Base of the United Kingdom in Gibraltar. When I quote, I am quoting not from the letter which I have not yet seen but from the Spanish press reports specifically in the ABC of the 27 September. According to that press report the alleged justification for that general and all-embracing joint say was "to avoid the repetition of cases like the submarine Tireless". And of course it was that report that makes it clear that this was not what the Spaniards were asking or were reported to be asking, was not for a joint consultation in relation to the health issues that arose from the Tireless only because, in effect, they were saying, the Tireless incident demonstrated the need for Spain to have for there to be a mechanism that enables Spain to have a joint say in the affairs of the base. And according to the ABC, which does not normally get reports wrong when they relate to the conservative Government of Spain, he attributes that information to an announcement made by the Foreign Minister, Señor Pique, himself just hours before his appearance in the Spanish Foreign Affairs Commission of their House of Parliament to explain the Government's position in relation to Tireless. The remainder of the report also refers to how Señor Pique "asked formally his British counterpart to establish, as soon as possible, an official dialogue to design a possible formula for future co-operation". A similar report was carried on the Internet by Reuters Business Briefing on the same day, the 27 September. The fact that two different news publications carry the story on the same day therefore dispelling the possibility that one may just be feeding off the other and that the first one was just speculating, are diminished. If two news sources carry the same story on the same day they have both obtained the story separately from each other. Reuters Business Briefing carries the report, and I quote, although in loose translation, it is in Spanish together with the ABC report "the Spanish Foreign Minister, Josep Pique, assured yesterday in Congress that he has claimed from the United Kingdom the joint control of the Naval Base in Gibraltar in order to avoid a repetition in the future of events like the situation generated by the need to repair the submarine Tireless in the Naval Base at Gibraltar." The report goes on "The Junta de Andalucia Government agreed yesterday to present" – this is a report about the Andalucian Government's decision – "a court action". And then it carries on in relation to Señor Pique quoting him, "It is not admissible that decisions which affect directly the security of Spaniards as is the presence of nuclear powered ships in the Port of Gibraltar, that such decision can be taken by third parties to the exclusion of Spain affirmed the Minister to justify his petition for joint control of the base at Gibraltar". There can therefore be, Mr Speaker, no doubt from the Spanish press reports that this letter containing these requests exists. Indeed, it has subsequently become clear to me from conversations that we have had with His Excellency and others, that the letter exists and that the great debate taking place inside the Foreign Office and other Whitehall Departments is whether and how it should be replied to. The Government wrote on the 10 October directly to the Foreign and Commonwealth Office because the following day or maybe two days after the original press reports appeared in the

Spanish press, the ones that I have just taken this House through, there was a further report carried by the Agencia EFE attributing to a Foreign Office spokesman the statement "London is studying sharing with Spain the control of the base at Gibraltar". Same reports made it clear that "London would respond at the appropriate time". These are Spanish news agency reports of words that they attribute to a Foreign Office spokesman.

HON J J BOSSANO:

What was the date of that second Agencia EFE report?

HON CHIEF MINISTER:

I cannot give the hon Member the date but it was sometime between the 27 September, the date of the appearance of the first reports, and the 10 October which is the date upon which I wrote to the Foreign Office alluding to the comments attributed to the Foreign Office spokesman.
Obviously the Government in that letter informed the Foreign Office that any such concept would be wholly unacceptable to Gibraltar and it is important that the notion is firmly and unambiguously and quickly rejected, it was on the 10 October. I also pointed out that "I would be grateful to learn whether such response has been made and, if so, its terms" and finally pointed out "that it would be unacceptable to find ourselves on this issue in a similar position to that appertaining to the Matutes proposals" which also had been said of it that it would be replied to "at the appropriate time" which is the phrase attributed by the Agencia EFE to a Foreign Office spokesman in the context of the joint control of the Naval Base letter and that it was not acceptable that there should be a document equivalent to the Matutes proposals lying indefinitely on the table unresponded to in relation to the Naval Base.

Mr Speaker, in the run-up to the Blair/Aznar visit, the Government of Gibraltar maintained intensely our representations to the British Government on the question of the reply to the Matutes letter especially urgency being added to that in the measure that the Spanish press started to trail in the run-up to the Blair/Aznar summit in Madrid that the possibility of the Prime Minister offering to his Spanish counterpart a visit to the submarine began to be trailed in the Spainish press. The position adopted by the Gibraltar Government was that whatever might be the merits or the demerits of a visit, to allow a visit in the context of the unanswered Pique letter gave serious scope for this to be viewed as precisely what Señor Pique had asked for in the letter and to which he had received no reply. Indeed, in the immediate run-up to the Blair/Aznar summit on the 27 October, Reuters Business Briefing again carried a report carrying the statement that London had confirmed that it had very much in consideration the Spanish proposal to create a joint organism to control the Naval Base at Gibraltar and it goes on to say, "The Spanish President, Jose Maria Aznar, will today ask his British counterpart, Tony Blair, for the creation of a joint organism through which Spain can participate in some measure in the taking of decisions that affect the Naval Base at Gibraltar". Despite the intensity, frequency and clarity of the Gibraltar Government's position in that respect, the outcome of the Blair/Aznar summit was reported to me, on the Friday afternoon of the summit itself as being that although the question of the visit had been neither ruled in nor ruled out and that it would be decided upon at a joint meeting of UK and Spanish experts that was scheduled to take place in Madrid the following week. I think at the time the meeting was scheduled to take place on Thursday of the following week and if my memory does not let me down, I think in the event it occurred on the Friday of the following week after the Blair/Aznar summit which itself took place, I think, on a Friday. During that week, that is to say, during the week immediately following the Blair/Aznar visit, the Government returned to the position that this visit should not take place until and unless the Pique letter had been replied to in terms which made it perfectly clear that the visit did not form part of any such thing as Señor Pique had requested in his as yet unanswered letter. There then began to emerge during that week in the Spanish press all the language of joint mechanisms because of course one thing is for the Spanish Government to be kept closely informed and the Government of Gibraltar consider that to be entirely proper and right and support the keeping of the

Spanish Government informed given that they are, but not more than, potentially affected and therefore interested and concerned neighbours and that Spain should be treated as one would treat any other neighbour. Yet, the Spanish Government, through the Spanish press, began making statements which referred to the establishment and existence of a joint commission between Britain and Spain. A joint commission which subsequent reports have shown comprises not just Spanish experts of the sort whom themselves have said had no expertise on nuclear submarines and mobile reactors but indeed consistent also of representatives of the Spanish Defence Ministry and representatives of the Spanish Foreign Ministry. The Spanish press now openly, regularly and frequently refers to the existence of this so-called "Comision Mixta" as they call it, a joint commission. Of course, I suppose it is possible that people who do not know better or people who have not seen all this happening before might say, "Well, is Gibraltar not just being a bit paranoid about this?" But the reality is that we have a letter from the Spanish Government requesting the establishment of a joint mechanism to give them say over the affairs of the Naval Base, a letter which remains explicably unanswered in the sense that presumably the Government of France or the Government of Morocco wrote asking for the same thing they would get a short sharp reply saying, "Britain does not share its naval bases on the basis that you are requesting", followed by the emergence in Spain of language which speaks of joint mechanisms and therefore in the Government's view we have to question whether the omission to date to reply to that letter does not raise the very spectre of the political concern that has motivated the Government in this matter from the outset. In the early afternoon of the Blair/Aznar summit and upon sight of the second Reuters Business Briefing saying "Spanish Prime Minister will today ask his counterpart" I again wrote to His Excellency the Governor pointing the report out to him, the repetition of Señor Pique's request for some sort of joint mechanism by which Spain can participate in some measure in the making of decisions which affects the Naval Base of Gibraltar, pointing out that given that Spain had herself admitted that she had no naval nuclear expertise and that she would also say that she accepted the facts being put to her by Britain, putting to His Excellency that the Government's view that in those circumstances the request for her experts to visit the submarine was a poorly disguised attempt to make progress in the direction of Señor Pique's request and pointing out to His Excellency that the letter records the clear statements that I had been making to him throughout that week and the previous week to the effect of the Gibraltar Government's total and firm opposition to such proposals. In the event, the meeting of the so-called joint commission of experts took place the week following the Blair/Aznar meeting, as announced in Madrid, and I was informed by His Excellency at one o'clock or thereabouts but almost exactly at one o'clock that the meeting had concluded, that it had been agreed that the Spanish experts would visit, the next thing I hear is on receipt of telephone calls from concerned Gibraltarian workers in the vicinity of the harbour that the experts were already in Gibraltar and soon thereafter as I think it was 2.30 pm or 3 pm, early afternoon that very same day the meeting took place. His Excellency the Governor then issued a statement in which he said that "the Defence Secretary, Geoffrey Hoon, has made it clear this evening that the decision to allow the visit of the Spanish nuclear experts is an act of good neighbourliness and that this visit has no implications for Spanish sovereignty over Gibraltar and that there is no question of allowing the Spanish Government a role in the control or management of the Naval Base in Gibraltar. "I do of course understand" – continued the statement from His Excellency - "the concern expressed by the Chief Minister but the British Government would not have allowed the visit to take place if they believed that this visit or its circumstances would allow Spain to claim any say in what happens in the naval Base. There is therefore clearly a difference of perception between the two Governments. I will continue to do all that I can to reduce these differences". Well, I suppose that is one way of putting it.

Mr Speaker, the point is this, that it is not enough for Her Majesty's Government to simply continue to repeat the phrase that it has "this or that has no sovereignty implication". Spain's ultimate ambition is the recovery of sovereignty of Gibraltar but in the meantime there are many other things that she seeks to make

advance on on the road to the recovery of sovereignty of Gibraltar and one of those things that she seeks to advance which is short of the recovery of sovereignty of Gibraltar is a handle of any depth, breadth or nature over the affairs of Gibraltar. We have seen her try to obtain it in relation to the airport. She has persistently claimed it also in respect of the Port of Gibraltar, now she claims it specifically over the Naval Base. Therefore to say that things do not have sovereignty implications, if by that they mean, "Look chaps, look at the top of the Rock, the Union Jack is still fluttering there", if that is what is meant by having no sovereignty implications then that may be true but that is not the whole of the issue. There are many ways in which Spain could be given a role or say to which she is not entitled over the affairs of Gibraltar which would still allow the British Government to say that it has no sovereignty implication and even that is open to debate because, of course, whether things have sovereignty implications or not is a matter of an objective analysis of the fact and not of an assertion, a simple assertion that it does not. Therefore to the extent that one gives a foreign country a role or a say in the affairs of one's own country, that is a partial cession to that foreign country of one's sovereignty. Sovereignty is not a magic word, it is a word which globally reflects and represents all the rights and powers and exclusive jurisdictions which governments enjoy within their own countries. And the acid test of whether Gibraltar in general and the Government should relax on this issue or whether it should not relax on this issue is not whether a statement is put out for local consumption as to what this represents or does not represent, as to whether Her Majesty's Government are or are not willing to give Spain a role in the control and management of the Naval Base but whether that same message is reduced to the letterheaded paper of the Foreign and Commonwealth Office and included in a formal reply to the letter from Señor Pique because otherwise what we have is an unanswered written request by one Foreign Minister to another with the counter-argument simply put into the public domain in Gibraltar in the form of a press release by His Excellency the Governor albeit quoting the Defence Secretary, Geoffrey Hoon. We believe so that there is no doubt whatsoever that Gibraltar's political anxieties and concerns in this respect are properly laid to rest, what Her Majesty's Government should do is to ensure that the Spanish Government receive a response to Señor Pique's letter which makes the position perfectly clear that the request for a joint mechanism for a say in the affairs of the Naval Base is rejected and so that we can be certain that that has occurred the motion that I am presenting to the House calls on the British Government, as I have been calling on them to do for the last several weeks, to provide the Government with a copy of the letter that the Foreign Secretary received from Señor Pique and of the proposed reply and indeed of the eventual reply sent so that we can be certain that Gibraltar's interests in this respect have been properly addressed and resolved to Gibraltar's satisfaction. I believe, Mr Speaker, that this House will be united on this issue. I have had that indication not Saturday of this weekend, the previous Saturday from the Leader of the Opposition. I think that we should unite around the stand that this issue should not become another Matutes proposals where formal requests are either not formally responded to or not responded to at all because these things represent creeping progress for longer term Spanish ambitions to bilateralism and involvement in the affairs of Gibraltar.

Mr Speaker, accordingly the motion calls on the British Government to provide the Gibraltar Government with a copy of that letter and of the reply and requests the Government to write to the Foreign Secretary informing him of the terms of this motion. I commend the motion to the House.

Question proposed.

HON J J BOSSANO:

Mr Speaker, we are indeed totally committed to the view that Señor Pique's letter should be provided because we want it provided not just to the Government of Gibraltar but provided to all the people of Gibraltar and, in fact, as I said recently in an interview, if the British Government think they can keep it from us by not publishing it, I am sure sooner or later we will read it in the ABC in full as happened with the Moran proposals when it was

kept under confidential cover long after it had been included in his autobiography.

The text that has been presented by the Chief Minister today is, of course, the one he sent me on Friday and I think just to put on record the sequence of events, as far as we are concerned, the Chief Minister approached me on Saturday of last week suggesting the possibility of a motion along the lines that would ensure that there was no division in the House and I said, "as long as we are talking about the Pique letter and not whether Tireless should go home or not go home then there is no reason why we should not be in agreement on that part of the argument". And frankly we only came out with our proposals publicly on Friday because the matter had already been put in the public domain even though no motion had been sent to the House or a draft sent to us. But I do not think we want to dwell on that but I think just for the record we would not have taken that step had it not been that we already read in the news and in the headlines that a motion was coming although we were still waiting for a reply to our proposals on Tuesday.

When we come to the motion itself, what we proposed was that this House should in fact be going direct to the Foreign Secretary. I know it has not been done before but then all the other times we have gone through the Government it has got us nowhere because the British Government have not yet replied to any of the previous motions we have passed in this House, any of them, ever. So maybe if it comes from the House it will have a difference. But I know that having had that proposal and the proposal on asking the Foreign Secretary to publish both letters with him since Tuesday the position of the Government is that they do not think it is practical to do that and if they do not think it is practical to get the British Government to publish the incoming one never mind the outgoing reply. Of course, the British Government have at least suggested to the Chief Minister that he might want to read the letter in the presence of the Governor but not take away a copy and no doubt the next concession might be to let him have a copy provided he does not let anybody else have a copy and then the concession after that might be that whoever gets a copy cannot give a copy to anybody else. Well, let that be the position of the British Government but let us not make it any easier for them. Let us ask them to be more open. Do they not go round boasting about transparency and how open they are on everything they do? If the British Government want to tell us that what they do with the Naval Base is none of our business because it belongs to them and because they are responsible for the defence issues, let them say so. But frankly if it was anything other than the Naval Base, I do not think there is any question at all, they have got the duty to tell us what other people are proposing about things that affect us. So we are not asking them for any favours, we are asking them to do what is required of them by the very nature of their trusteeship of this territory as the administering power. Indeed the United Nations have much to say about Naval Bases and use of Naval Bases against the wishes of the population of the colonial territories. Of course, this is not new. The Spanish Government were already angling for a say in the Naval Base in the Oreja Strasbourg Talks in 1976, it was put to Dr Owen who was then the Foreign Secretary of the United Kingdom, that and the airport and Dr Owen did not turn it down then. So no wonder the Spaniards keep on coming back to have another bite at the cherry because the British Government have never been forthright and robust in making the position as clear to Spain as we would make it if we were doing the talking and they do not reflect what we want.

Indeed, the Chief Minister made a reference to the parallel on the airport. Well, I think it is worth remembering that the parallel on the airport is that although they held a perception originally that it had no sovereignty implications that is no longer their perception either, they have now admitted in answer to questions in the House of Lords that the provisions on having to have prior consultation with Spain before flights to Gibraltar are allowed is effectively capable of having sovereignty implications and they denied it. They said it was the Spanish version, not the British version and they denied it in 1987 and for every year since until about a year and a half ago when they told the House of Lords what they had been denying before was true and that shows that their perception, in our judgement at the very least, is not based

on an honest analysis of the text but on what they feel they can get away with. Their perception is not the perception that we might have when we look at it frankly without an agenda other than the interests of Gibraltar. The Foreign Office of the United Kingdom is there to protect the interests of the United Kingdom and en passant look after ours but if ever they come into conflict there is no question as to which has the higher priority inevitably. That is what they exist for. They do not exist to defend the colonies at the expense of the colonial power, it is the other way round and there is no reason to suppose that they will act any differently on this as they have done on every other issue before. So it is not a question that we should be concerned about anybody thinking we are being paranoid. Far from being paranoid I think we are too laid back on this and on many issues where there are already clear attempts by Spain to create a scenario where nothing can happen in Gibraltar in relation to anything without their involvement at some point obviously started by saying, "We have to be told and then we have to be asked and then we have a veto", that is the logical sequence of giving them a say.

We are opposed to visits by Spanish experts to the submarine because we think they have got no right to be here and therefore whether the letter is answered or not answered, rejected or not rejected, for us is a separate issue. We want the letter answered and we want the proposal rejected but the fact that that has not happened is not what makes us say we do not want the Spaniards coming to visit the submarine. Indeed I understood that to be the position of the Government before when the Spaniards themselves admitted that there would be little point in coming here anyway because they had never been on a nuclear submarine before and they knew nothing about nuclear submarine reactors so what did they come for? They came as a concession to Spain to enable them to say, "We are having a role there". That is what they came for and that is the only possible reading of their visit even if there had been no letter. So if His Excellency says it is a matter of good neighbourliness and that there is a difference of perception then it would appear that there are three perceptions not just two. There is the perception of His Excellency that it is a matter of good neighbourliness even though the letter has not been answered; there is the perception of the Government that it is a matter of good neighbourliness only if the letter had been answered and the proposal rejected but it is not good neighbourliness with the unanswered letter; and there is our perception which is they are not good neighbours at all, period, they are lousy neighbours and because they are lousy neighbours the fact that they may come here in their millions to buy goods in our shops does not make any difference in an issue like this because our people go over there and spend as much money over there and that does not make them treat us any better or say, "The Gibraltarians are welcome tourists in Spain and we should not be interfering with their ID cards or interfering with their driving licences", never mind, saying if there was a nuclear submarine in Algeciras, "because they are such good neighbours in Gibraltar we ought to have the experts appointed by the Government of Gibraltar crawling all over the Spanish submarine in Algeciras". It is inconceivable and therefore our attitude to Spain must be reciprocity to the hilt because anything less than that means they put a foot in the door and before we know where we are they will have taken over the house. So let me say that in supporting the motion and in sending a message which presumably is what the motion is intended to achieve, that the Government of Gibraltar are not on their own in this one because the motion, as drafted, is really asking the Foreign Secretary to do what he has already been asked to do and has not replied to and since I imagine that this is being taped and monitored by The Convent so that they can put it on the next courier to London, let me send a very clear message that not only are we in agreement with the Government's demands on the Pique letter but that if anything, we would want them to take an even more robust stand in saying, "Even after you have answered the letter we are opposed to the Spaniards visiting Gibraltar" and that in any case, irrespective of the wisdom of any position adopted by the elected Government of Gibraltar in relation to differences of opinion in Spain, as far as we are concerned, we have got the right to question their judgement and their wisdom of their actions because we are the Opposition elected by the people of Gibraltar but if it comes to the issue being one as to the Gibraltar

Government or the United Kingdom Government, we will always be on the side of the Government of Gibraltar so they can put that on the tape and send it over to London.

Mr Speaker, we have had a few words before the House commenced and I had prepared an amendment which obviously does not try to ask the UK to publish the letter but comes close to it. I am going to move the amendment, I imagine that part of it will be acceptable and part not from the few words we had before but I would like to put on the record that that is what we think is the preferred text that goes to the UK following the letter that I had from the Chief Minister on Friday and having thought about it over the weekend in terms of what he said in that letter. Therefore what we are proposing is that the motion be amended as follows:

(1) Delete the words "Gibraltar Government" wherever they appear and replace with the words "this House".

So we are saying the Pique letter should be provided to the House. If the Government of the United Kingdom do not want that letter to be in the public domain then let them say it is available on such and such terms to Members of the House. But why should any one of us, in an issue such as this which goes to the very root I think we are all the same, all Gibraltarians have got equal rights and equal voices in this matter not just whether elected to Government or Opposition but I think really, Mr Speaker, the whole of us in Gibraltar have got a very clear interest in this matter and a right to know and a right to know what is being answered when it comes to things that affect our future and the future of our children. But if the British Government do not want to put it because it is not a thing that is done in terms of international diplomacy then it should be available to the Parliament of Gibraltar, in our judgement and not just to the Government on a restricted basis or even to the Government on a restricted basis to put it on a restricted basis to the Opposition. Let the restrictions be put by the United Kingdom and not by ourselves.

(2) We also propose that after the words "Foreign Secretary" in the final sentence insert a comma and add the words "to Andrew Mackinlay MP, Chairman of the Gibraltar Group and Donald Anderson MP, Chairman of the Foreign Affairs Committee".

That is to say, we are asking the Government to send this text not just to the Foreign Office but to the two other entities that have been so supportive of Gibraltar, our own people in the House of Commons and the Foreign Affairs Committee which has in the past been critical of the shortcomings of the Foreign Office when it comes to Gibraltar.

(3) And as a consequential that the word "him" should be replaced by the word "them".

Because, of course, it is being sent to them and not just to one person.

(4) That the final full stop at the end of the motion should be replaced with a comma and the following words should be added: "and further requests the Government to report back to the House on the responses received."

So that in fact on the terms of our amendments the motion would read, if it were accepted,

"This House calls on Her Majesty's Government:

(1) to provide to this House a copy of the letter received by the Foreign Secretary from the Spanish Foreign Minister requesting to have an influence over military facilities in Gibraltar;

(2) to reply without further delay rejecting the Spanish request as wholly unacceptable in language which is clear and unambiguous and to provide a copy of that reply to this House,

and requests the Government to write to the Foreign Secretary, to Andrew Mackinlay MP, Chairman of the Gibraltar Group and to

Donald Anderson MP, Chairman of the Foreign Affairs Committee informing them of the terms of this motion, and further requests the Government to report back to the House on the responses received".

I believe that the heart of the motion, of course, is what is already in the existing text. What we are proposing is an amendment which in our view will make it more difficult for the British Government to wriggle out of this one by making them, if we like, answerable not just to the Government which they are, as far as we are concerned, and as far as we are concerned they should have answered the letters of the Government when the Government asked without the need for this to come to the House but what we are saying is effectively "If you think you can get away with ignoring the Government of Gibraltar then think again because now we are asking you not just to explain your actions to the Parliament of Gibraltar but also putting you on notice that you might well have to explain to the Parliament in the United Kingdom through the work of our friends in the Gibraltar Group and to the Foreign Affairs Committee that has got the right to call in the Foreign Secretary and ask for an explanation" as it has already done over the refusal to act on an EEC issue over our rights to vote in the EEC, over the Brussels negotiating process, over the Matutes proposals. On all these issues the Foreign Affairs Committee has come down more on the side of Gibraltar than on the side of the UK and I think it would be worthwhile trying to get them on side of this one as well. I therefore commend the amendment to the House.

Question proposed on the amendment.

HON CHIEF MINISTER:

Mr Speaker, speaking only to the amendment, I think we first of all just need to clarify what the hon Member is proposing. When he says, delete the words "Gibraltar Government" wherever they appear let us just be clear that the words "the Government" which are not the words "the Gibraltar Government" which he is proposing to delete but the words "the Government" remain in the penultimate line. So that the amendment would call on Her Majesty's Government to provide to the House a copy of the letter from Señor Pique, to provide to the House a copy of the reply and requests the Government to write to that expanded list of people. The expanded list of people would include Andrew Mackinlay as Chairman of the Gibraltar Group and Donald Anderson as Chairman of the Foreign Affairs Committee. There is then consequential grammatical amendments with the addition of the point to the last part of the motion that the Gibraltar Government should report back to the House on the responses received.

Mr Speaker, if I have correctly understood therefore the amendment, the Government have no objection in the principle of it to the provision being to Government or to the House except that to the extent that the House asks for something which they can decline to do for extraneous reasons we are just increasing the chances that they will use it as an excuse on procedural grounds rather than substantive grounds but the Government do not mind putting that in. For example, I believe that given that there is a difference between a Government and a Parliament and that a Parliament passes laws and debates things but a Government conduct the day-to-day affairs of a country and given also that any document which is sent to Parliament is necessarily published. In other words, in the public domain there is no way of sending a document to the House of Assembly which does not entail publication to the world of it because unlike governments, parliaments cannot deal with documents in that confidential manner. And here I am drawing a distinction between the document itself on the one hand and its content on the other. I have already had the opportunity to sight the incoming letter from Pique on terms which were not acceptable to me. But if the Government were to receive a copy of the incoming and outgoing letters, the Government might be persuaded to the view that an exchange of correspondence between Foreign Secretaries should not be published in the sense of taking photocopies of the letters themselves with signatures and letterheads and publish the document. But the Government could not be persuaded to the view that even if it were willing to recognise the confidentiality of the document per se in terms of not photocopying them and

circulating them to the public, the Government would not be persuaded of the view that we should not make public use of its content in terms of saying, "This is what the Spanish Government were asking for, this is what the British Government have responded". And the Government have so far been moved by that distinction which Opposition Members may think is too fine to be relevant in the cut and thrust of political life but the reason why the Government want to make that distinction is that we do not want to give the British Government the procedural pretext. We want this motion to read we think it would be preferable for this motion to read, in terms that if we do not get satisfaction we know it is for reasons to do with the merits of the issue and not because the Foreign Office says it is not conventional practice in diplomacy to publish letters written by a Foreign Secretary to his counterpart in another country regardless of the issue, regardless of the controversy. If we call on the Foreign Secretary to do something which amounts to publication of the letter, "Dear Everyone in Gibraltar, Here is a copy of the letter that Señor Pique wrote to me marked 'Private and Confidential' and here is a copy of my reply". Much less likely that they will agree to do that for reasons nothing to do with the substance than it is that they will agree to say to the Government of Gibraltar, "Here is a copy of the letters on the clear understanding" – which the Government of Gibraltar would certainly make clear that the Government would not be willing to keep its contents confidential as opposed to the publication of the document itself. I suppose if one wants to be so cynical as to assume that whatever the text of the motion neither is going to prosper then one could equally take the view that it does not matter if one asks for things which complicate life because in any case the less complicated version of life is not going to prosper either well one might have asked for the lot, that is a matter of judgement here and now in the heat of the moment for us both to take. My own view remains that we should give the British Government every opportunity to satisfy Gibraltar on this issue in a way that does not give them an escape route. But I say to the hon Member in the knowledge that he will support the motion whether or not I agree to his amendment, in that knowledge that having explained what has motivated the Government to draw this distinction between publication of the letter and sending a copy to the Government that if the Opposition remain of the view that it should nevertheless read that the things should be sent to this House, that the Government are minded in the interests of genuine unity as opposed to just requiring them to support it because they are broadly in agreement with the issues, we will agree but I would ask the hon Member, knowing that he has it in the bag if he wants it, to consider whether or not given that referring to the Government as opposed to the House is (a) not going to prevent either the Government or the Opposition from being aware of its contents, and (b) given the fear that we have that it might give them a means of wriggling off the hook, whether we should not at this stage deprive them of that possibility by playing it cautiously rather than boldly. Then I suppose, Mr Speaker, if the House forms the view that it should be a request to provide the documents to the House as opposed to the Government, it then begs the question of whether the last bit of his amendment is entirely logical because presumably if the House is asking him to provide this to the House it hardly seems logical to request the Government to respond to the House on the responses received. Presumably the response would then not be to the Government but to somebody else or I suppose it is possible that even if he receives the motion asking him to report to the House, if he is minded to respond at all he might still respond to the Government and that would make the final amendment relevant. We are content to subject the Government to the stricture of having to send a copy of this motion to the House of Commons Foreign Affairs Committee and also to Andrew Mackinlay and the Government would do so with pleasure and satisfaction. The Government are always willing to report back to the House on any issue of public importance to Gibraltar, particularly one on which the House is acting as one in the interests of Gibraltar so certainly whatever logical or not, we are quite happy to support the last bit of the amendment and indeed we will support the whole of the amendment if I have been unable to persuade them on the point of leaving the Gibraltar Government rather than the House in sub-paragraphs (1) and (2) of the motion.

MR SPEAKER:

Before I call on the mover is there any contribution from any other hon Member.

HON J J BOSSANO:

Mr Speaker, in the light of what the Chief Minister has had to say I propose to further amend the amendment which I think will take care of that. That is, by adding the words "this House" after "the Gibraltar Government" instead of putting it in substitution. So we ask the British Government to provide copies to the Gibraltar Government and to the House and that does not give them the excuse of saying, "Well, since I do not give it to the House I do not give it to anybody" because they can still give it to the Gibraltar Government but it would then be that they refused to give it to us and not that we have not asked for it. In my view that will take care of the point that has been made that we should not give them an excuse for saying, "Well, since I do not give it to the House and it is only the House that is asking for it and nobody else then I do not give it to anybody". The last sentence, of course, is there because the responses to the action taken by the Government are not just from the Foreign Office but also from the Foreign Affairs Committee and from the Gibraltar Group so the Government might be in a position to report back to the House how the Foreign Affairs Committee has reacted to receiving this motion and that could only come through the Government because we are not asking either the Foreign Affairs Committee or Andrew Mackinlay to send anything directly to the House so that any response from them would necessarily have to come to the Government, this is why the last sentence is relevant even if the Foreign Office, as it were, bypassed the Government and came directly to the House which we all think is not a very high probability there would still presumably be some kind of reaction from the Foreign Affairs Committee and the Chairman of the Gibraltar Group who might want to take the matter up and write to the Government saying what is taking place and we would expect that a report of that would additionally give us an opportunity to debate the issue further if there was a need for any further debate or any further action.

So I propose that my proposed amendment should be altered so that instead of replacing the words "Gibraltar Government" by the words "this House"; the words "this House" should be introduced after the words "Gibraltar Government" so that it would read, "to provide to the Gibraltar Government and this House a copy of the letter" in paragraphs (1) and (2).

HON CHIEF MINISTER:

Mr Speaker, the Government can support that amendment.

Question put on the amendment. Carried unanimously.

HON CHIEF MINISTER:

Mr Speaker, avoiding dealing with issues that arose in the hon Member's initial contribution and which have been covered in our discussions relating to the amendment, the Leader of the Opposition said that the Opposition are opposed to the visit because the Spaniards have no right to be here. The Government can agree with the reasons that he gives but not for the use to which he puts it. In other words, the Government agree that the Spanish have no right to be here but the fact that they have no right to be here does not mean that they cannot be invited to come here in circumstances which makes it perfectly clear that they are gaining no political advantage therefrom. In other words, not having the right to be here is not of itself a comprehensive reason for not allowing them to come in the proper circumstances for the proper reasons and without the political baggage which the Pique letter seeks to attach to that visit. In Gibraltar we receive visits from Spanish journalists and Spanish policemen and Spanish Customs Officers and Spanish Social Security people and people of that sort and therefore the simple visit to Gibraltar by Spanish functionaries is not, at least insofar as the Government view is concerned, necessarily objectionable. It becomes objectionable if it is done against a political backdrop

which has extraneous and adverse political consequences to Gibraltar and that is why the Government's position is not that the Spanish experts should not be here but that they should not have come until the Pique letter had been properly responded to so that the visit which in different circumstances was not of itself objectionable, could not have the extraneous and adverse political consequence that it might otherwise have and which the Government believe it does have in the context of the non-reply to the Pique letter. Mr Speaker, I think that is an important distinction. I believe that looked at objectively, if there is danger attaching to the Tireless repair it is danger that Spain faces as much as Gibraltar and therefore that the Spaniards, as a neighbour, one does not have to use the adjective 'good' or the adjective 'lousy' or the adjective 'indifferent', if the Spaniards as a neighbour want information and want to be kept reassured about the things that are of genuine and legitimate interest and concern to them, then the Government of Gibraltar think that that is fine. In fact, if the Government of Gibraltar think that it is correct and the Government of Gibraltar would extend that to a visit if and to the extent that the visit is relevant, assists the Spaniards not in managing their public relations disaster at home; not in making political steps forward but if it were genuinely relevant in assisting them to be informed and to be reassured as neighbours given that that is a legitimate aspiration on their part. But, of course, the Spaniards themselves eliminated that scenario when they came out before the visit no less than the Consejo Nuclear Superior saying, "We do not want the visit, there is no purpose in going because we would not know what we were looking at even if we went". If it all boils down to giving them a gin and tonic in the wardroom of the submarine then that does not serve, is not capable of serving and by their own admission, is incapable of serving any genuine technical desire on their part to be informed and therefore can only respond to a desire to visit for the sake of a visit for some reason other than technical education. And that is why in my letter to Mr Keith Vaz that I published I sent him all the press reports of which he was incidentally unaware until that time, of the Spanish nuclear experts themselves saying, "We have no expertise, we do not know what a nuclear submarine looks like and we would not know what we were looking at even if we bumped into it in the street". In those circumstances, to proceed with a visit without an answer to the Pique letter meant that this visit was some part of some political genuflection in the context of the Pique letter rather than that which the Government of Gibraltar would have thought perfectly okay which would have been a visit by experts from Spain in the context of a genuine process of neighbourly information and neighbourly reassurance but they made that impossible by their own admission before the visit that they did not want the visit for that reason.

Mr Speaker, if Señor Pique has said that he wants a joint mechanism for a joint say over the affairs of the Naval Base and before that letter is answered we have a request for a visit, that visit can either be for technical purposes or for political purposes. At the time that both were a possibility, I suppose that it was open to parties to play one end against the other against the middle and to leave it ambiguous about whether it was for political or for technical reasons. But once the Spaniards themselves eliminated the technical possibility by saying that they did not want it for technical purposes that only left the political possibility, the political explanation for the visit and that is why the Government of Gibraltar believe, with the support of this House, that it is important for political purposes that this matter be dealt with because the way the record stands, the way the chronology of events stand, the way the Spanish statement stands, whatever London may say through the Governor here, anybody in the future studying this affair is much more likely to come to the conclusion that the visit and the joint Comision Mixta is more likely to respond to the Pique letter than it is to any genuine desire on the part of the Spaniards to inform themselves for neighbourly reasons of matters of nuclear safety.

Mr Speaker, the British Government rightly say that it is in the Government's opinion correctly committed to a full and transparent flow of information about the Tireless both to Gibraltar and to Spain. Well, it has not been necessary in order to keep that flow of information and transparency going between London and Gibraltar for London and Gibraltar to form a joint commission. It is perfectly possible to transmit information from one party to

another in the fullest extent without establishing a joint body. There is not a joint body between the United Kingdom and Gibraltar and I therefore do not accept that in order for Her Majesty's Government of the United Kingdom to keep Spain properly informed of matters of legitimate interest and concern to Spain, that it is necessary or was necessary for a Comision Mixta to have been set up. It is just a question of passing over the information and if there is a need for a Comision Mixta, I want to know what Señor Perez Grifo, the Head of the Gibraltar Desk at the Spanish Foreign Ministry, contributes to that Comision Mixta. This is either for technical reasons or it is for political reasons and if the Spanish Consejo Superior Nuclear admit to have been totally ignorant on matters relating to mobile nuclear reactors, I do not suppose that there is anybody in the Spanish Foreign Ministry with a greater degree of expertise in these matters than their own nuclear experts. So wherever one looks at this matter the fact is that it points to events which had a political rather than a technical backdrop but if we are wrong, if we are a bunch of paranoid people it is very easy to relieve us of the burdens of our paranoia and that is simply to write the sort of letter for which I can think of no good reason why it has not been written already. If it is Her Majesty's Government's position that the Spaniards cannot have a say, of course, one would have to carefully examine whether the words "Spain cannot have a role in the control or management of the Naval Base" is actually synonymous with saying to them that they cannot have a say or they cannot have a joint mechanism through which they can express their views to the United Kingdom, one can have a joint mechanism for giving Spain the mechanism to express its views and therefore have her handle that way without it amounting to joint control or management. So even the words that have not been uttered are pretty carefully chosen. The way to relieve us of our paranoia lest we should all be collectively suffering from it, is to write the sort of letter that any British citizen would think would be the natural and immediate response when a foreign Government makes an impertinent request of that sort. Because whenever I speak of paranoia I always remember the words attributed to Oscar Wilde that "the fact that you are paranoid does not of course mean that they are not out to get you".

Mr Speaker, I conclude by saying that the whole issue that we have been debating in this House this morning cannot be totally separated from a press report that appeared in the Spanish press at the same time as all of these although more recently towards the end of the affair rather than at the beginning of the affair, in which the Spanish Defence Minister made a public statement saying, in effect, that the Pique request had to be seen in the context of what he called – and one is only relying on press reports – on what he said were "on-going discussions about ultimate Spanish NATO control over the NATO assets in Gibraltar". As far as the Gibraltar Government are concerned, the British Government's position confirmed in writing to the Gibraltar Government is that Spanish officers even if they exercise a NATO command, for example, in the context of a south-western Mediterranean NATO sub-command, would not exercise command and control over Gibraltar assets. Therefore I believe that it is important that we do not allow any leak to be made in the wall of this particular dam because once it is penetrated by however small an amount it will inevitably lead to bigger and greater things. I would just conclude by expressing to the Opposition Members the Government's gratitude and appreciation for their spontaneous and unconditional support to the Gibraltar Government in our position in this matter which obviously I think we both agree increases the chances of the initiative being successful although we know it to our cost in the past that it does not guarantee it.

Question put. Motion, as amended, carried unanimously.

The House recessed at 11.55 am.

The House resumed at 3.05 pm.

HON CHIEF MINISTER:

Mr Speaker, I have the honour to move the motion standing in my name which reads -

> "This House -
>
> Affirms that the judicial independence, namely the ability of the judiciary to dispense justice without interference from any other source, and with the benefit of sufficient resources to do so, is an essential pillar of the rule of law and democracy which is fully safeguarded in Gibraltar by law and long established practice."

Mr Speaker, the majority, if not by now all the Members of the House will be familiar with Gibraltar's longstanding and hitherto unchallenged system for funding the judiciary and that is that although the judiciary in the sense of its adjudicating function, in other words, administering justice in the sense of adjudicating in cases whether they be civil or criminal, is a function completely divorced from the executive and as the motion recognises from everything else not just the Government from which the judiciary needs to be protected in that respect but indeed from all other sources and it is right that that should be so. But for the purposes of funding, indeed for the purposes of staffing, for the purposes of the provision of the judiciary with buildings, equipment and resources of all types, the judiciary had always been regarded for the purposes that I have described as a department of Government. hon Members will be aware that Head 12 of the Estimates of Revenue and Expenditure which are presented by the Government every year in this House and debated in this House and approved or not, as the case may be, in this House as part of its appropriation mechanism for the authorisation of public expenditure includes the judiciary vote. Accordingly, the entity that provides funding for the judiciary is this House through the appropriation mechanism and once this House has approved a vote for the judiciary it no longer lies in the hands of the Government to deny that funding in the sense that it then falls under the control of the Controlling Officer of that vote which in the case of the Supreme Court part of the judiciary vote is the Registrar of the Supreme Court and in the case of the Magistrates' Court part of the judiciary is the Clerk to the Justices and, of course, the existing long-established and hitherto unchallenged system has been that. That this House approves funding for the judiciary and thereafter it is not controlled by the Government in any sense that might result in appropriated funds being withheld from the judiciary after it has been approved in this House and after it has come into the control of the Controlling Officer.

Supplementary funding requests, of course, are a different matter. The department, like all departments in Government, submit their bids for funding at the time that the Government are preparing their budget. The House then approves the vote. Certainly I think I can say with confidence that since we have been in office, which is not to suggest that the position might have been any different before, the vote of the Supreme Court has never been reduced, and the Magistrates' Court for that matter. No one has ever said to me or to anybody else in this Government that the judiciary is insufficiently resourced or insufficiently funded. No one has said to me, "Chief Minister you are not voting enough funds for the judiciary and as a result the judiciary cannot dispense justice in Gibraltar as one would expect in a modern western European democracy" which is, after all, what we are and not to be compared with other more far-flung and remote corners of the globe where issues of judicial independence may be at stake and I think it is important not to tarnish Gibraltar with experiences that may have been obtained in other such jurisdictions. Mr Speaker, when during the course of a financial year, and I know that in the case of the Leader of the Opposition I am teaching him to suck eggs because he is familiar with the process, the judiciary wants additional funding for things that they did not seek in their departmental bid it is then a matter for the Government to decide whether sufficient funds or the additional funds can or should be made available from unvoted supplementary funding. And I wish to make it perfectly clear to hon Members in this House that that system has suffered

absolutely no change of any sort certainly since this party has been in office and I suspect it has not changed or had not changed in any of the preceding years, it is a long-established system of funding the judiciary of Gibraltar with which no one had previously taken issue either in the more distant past or in the immediate past.

Mr Speaker, much has been made in the last two years about something called the Latimer House Guidelines. Of course, anyone listening to that debate might have been forgiven for considering or for coming to the conclusion that the Latimer House Guidelines are the very stones on which Moses scripted the Ten Commandments and that life, without the Latimer House Guidelines, is relegated to worse than a banana republic. Well, it is just as well for this House to be aware of what the Latimer House Guidelines are and what their status is so that the House can then form its own view about whether the fuss that has been made about them and the presentation that they have been given in public justifies the potential that there has been for irreparable damage to Gibraltar's international reputation in this respect. If the Latimer House Guidelines were so important that it deserves and justifies the Chief Justice of the day making statements which are so ambiguous that it causes the hon Dr Garcia to issue public statements accusing the Government of interfering with civil liberties in Gibraltar, if that is the extent of the importance of the Latimer House Guidelines well, the least that the Government would have expected before anybody should say anything that causes the hon Dr Garcia to suggest that the very respect for civil liberties in Gibraltar is under serious threat, is at least to have brought the Latimer House Guidelines to the attention of the Government because if the Latimer House Guidelines are what some people, who should know better, have lead public opinion to believe that they are when in fact they are not, then one would have expected an element of prior debate with the Government to say, "Look Government, these are the Latimer House Guidelines, what are you going to do about implementing them in Gibraltar?" and I suppose if they were Moses' tablets, after a period of time and the Government saying, "I want to be a banana republic and I want to interfere with the judiciary and I want to do all these things and therefore I am not applying the Latimer House Guidelines" it may then be an appropriate case for somebody to say publicly, "Naughty Government will not implement the Latimer House Guidelines".

Mr Speaker, it is just as well to mention that the Latimer House Guidelines are not actually just the Latimer House Guidelines on judicial independence. Their full title is the Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence because it is another basic precept since there are some Members in this House that appear keen to lecture on what are fundamental principles of British constitutional law. It is also a fundamental principle of constitutional law that parliament is supreme which is not to say that parliament interferes with judges so that they cannot make independent adjudications in their courtrooms. But it does mean that parliament controls the purse strings as much in the judiciary as in any other aspect of public expenditure.

The Latimer House Guidelines, Mr Speaker, are a set of guidelines drafted in June 1998 before which, of course, the world used to turn. It is not that the planet started to turn for the purposes of the administration of justice in June 1998 so that before this handful of judges got together we were all practising banana republic administration of justice. But still, I do not for one moment say that the Latimer House Guidelines are not perfectly sensible. What I can tell the hon Members for sure is that they have not yet been adopted by a single country in the Commonwealth. There is not one country in the Commonwealth, there is not one Government in the Commonwealth and there is not one parliament in the Commonwealth that has yet adopted the Latimer House Guidelines. The Latimer House Guidelines are promoted by four organisations all connected with the Commonwealth. One of those four organisations is the Commonwealth Parliamentary Association where hon Members know Gibraltar has many friends and the Commonwealth Parliamentary Association as one of the four sponsoring Commonwealth organisations of the Latimer House Guidelines wrote to my hon Colleague, the Minister for Trade and Industry,

as recently as the 13th October this year saying, "So far as we are aware the guidelines have not been adopted by any Commonwealth country or Government. The guidelines were presented to Commonwealth law ministers at their last meeting in Trinidad and Tobago in September 1999. Although welcomed in principle, some Ministers had reservations about certain parts of the guidelines and after some discussion referred the guidelines to the group of senior officials for further consideration. The senior officials next meet in June 2001" - a date which not only had not arisen when all the fuss was made about them back in 1999 but indeed which still has not arrived. Commonwealth Chief Justices met and considered the guidelines last month just before the Commonwealth Magistrates and Judges Association Conference in Edinburgh and issued a statement on the Latimer House Guidelines. I have here the statement issued by the handful of Commonwealth Chief Justices that met in the fringe of the Edinburgh Magistrates and Judges Association Conference to consider again the Latimer House Guidelines. Those judges included the Hon Sir Dennis Williams of Barbados, the Hon Justice Wall of Bermuda, the Hon Justice Nganunu of Botswana, the Hon Justice Pikis of Cyprus, the Hon Justice Schofield of Gibraltar, the Hon Justice Bernard of Guyana, the Hon Justice Millhouse of Kiribati, the Hon Justice Banda of Malawi, the Hon Justice Uwyis of Nigeria, the Hon Sir Arnold Amett of Papua New Guinea, the Hon Justice Fasholoop of Sierra Leone, the Hon Justice Sappire of Swaziland, and the Hon Chief Justice Ground of the Turks and Caicos Islands. Mr Speaker, hon Members will notice from that list the complete absence of any judge representing a large democratically advanced jurisdiction in the Commonwealth none of which is to suggest that the Latimer House Guidelines are not either in whole or in part, a perfectly sensible set of guidelines which, when adopted by the Commonwealth, will be I suppose implemented by Commonwealth countries including the United Kingdom that has a system for funding the judiciary very similar to our own and all the other countries, for example, New Zealand that actually objects to the Latimer House Guidelines precisely in relation to the issue of funding of the judiciary. And it is against this backdrop that they are presented to public opinion in Gibraltar as if they are the Gospel in relation to the civilised administration of justice. So that any Government that dares to do something inconsistent with this brand new document that has not yet been adopted by anybody is somehow in the back of the woods of the beyond in relation to matters relating to the administration of justice.

This is a statement that the Justices that attended this fringe meeting in Edinburgh issued on 9th September as a result of that meeting, "At a meeting of Chief Justices of the Commonwealth held in Edinburgh on the 9th September 2000, the Latimer House Guidelines for Parliamentary Supremacy and Judicial Independence were considered. The meeting commended the guidelines for consideration by Commonwealth Heads of Government and expressed support for the efforts of the four sponsoring organisations to refine the guidelines. The Chief Justices welcomed the importance the guidelines attach to the independence of the judiciary and the provisions relating to adequate funding for the judiciary which, when approved by the Legislature, should be under the judiciary's control". And I ask the hon Members to consider when that is not as good a description as any of our system for funding the judiciary. Is our system for funding of the judiciary not one when after adequate, we could argue about whether they are adequate or not but certainly no one has argued that in quantum they are inadequate, the hon Member will have to speak for himself for the years in which he was in office. Certainly no one has ever said to the Government since the 16th May 1996, "You are not providing enough money for the judiciary". Is not ours a system for funding the judiciary which whether approved by the legislature that is us, should be under the judiciary's control? Mr Speaker, once the funds are approved by the legislature they may be spent without further recourse to the Government by its Controlling Officer who are, as I said earlier, members of the judiciary. But of course, consideration has to be given to whether funding being under the control of the judiciary means that we simply say, "£750,000 for the year 2002" and somebody decides how that money is spent. Is it spent on wages? Is it spent on a new building? Is it spent on travel? Is it spent on entertainment? Is it spent on this or on that?

Of course, we do not have that sort of system but I do not know of any country that does. What we have is a system where this House not only decides the amount of the money but votes that money to a series of Heads and subheads, then there are rules about virements which allows departments to transfer money from one subhead to the other provided that in all cases the expenditure is a proper call on public funds. Mr Speaker, I would suggest to the hon Members in this House that the system for funding the judiciary in Gibraltar admirably complies with the as yet unbinding, unadopted, still to be refined, still to be presented for political clearance to the Heads of Government of the Commonwealth so-called Latimer House Guidelines.

Mr Speaker, just to draw from some of the speeches made by some of the Chief Justices present at that conference, Sir Philip Bailhache of Jersey who is the Bailiff and Chief Justice, in Jersey they appear not to be quite so squeamish about the separation of powers. There the Bailiff, who is I understand the Speaker of the House of Parliament is also the Chief Justice so I suppose they are even more backward than we are in these finer issues of the separation of powers which is such a fundamental principle of British Constitution. But I think he gives a perfectly sensible definition of what the average lay person understands by interfering with the independence of the judiciary. Talking about the average citizen and about high sounding principles he says, "What matters to him" – the citizen – "is whether the judge or magistrate before whom his dispute is to be litigated is in fact impartial and independent of political or improper influences". I think that that is a perfectly sensible definition of interference with the judiciary. I would ask the hon Dr Garcia to cast his mind back because I am going to remind him anyway later on this afternoon, to what he thinks happened and of the accusations that he made against the Government from a position of total ignorance of the facts and I would ask him to just ask himself whether he thinks that I or anybody else in the Government was interfering with the judges or the magistrates in a manner in which the ordinary citizen might feel that the improper influences were being brought to bear such as affected the impartiality and independence of the decision-making process.

Mr Speaker, the Chief Justice contributed as well, I think in a very constructive and on the whole enlightened manner to the debate. I think he delivered a speech with much of which we would all agree, I am not sure whether the hon Member would agree with all of it, I think they would wish to read it carefully before they agree with all of it but what our Chief Justice said, amongst many other sensible things, he was addressing the gathering on maintaining judicial independence in a small jurisdiction, apparently and by all accounts a subject all on its own. I do not know whether it is that it is assumed that those of us who reside in small jurisdictions have a larger tendency or propensity to interfere with the independence of the judiciary but still, in it he says, "My experience is that the Cayman Islands" – from which he came, of course, immediately before arriving in Gibraltar – "and Gibraltar are jurisdictions where judges are not subjected to any direct interference in relation to the cases before them". I read this for the benefit of the hon Dr Garcia so that he knows what I meant when I said to him that he was abusing the Chief Justice's statements at the Opening of the Legal Year and whereas the Chief Justice was not trying to suggest that there was that sort of interference with the judiciary, the hon Member was using carefully ambiguous language to try and give as many people the impression as possible that the Chief Justice had been suggesting that there was that sort of political interference. He does not have to recall, I am going to remind him exactly all the things that he said in his various press statements in a while. "There are stresses and strains, particularly in maintaining the appearance or perception of independence but there are none of the problems of direct interference such as I encountered in my previous jurisdiction of Kenya". Well thank the Lord for small mercies, we are at least more advanced than Kenya.

Mr Speaker, there are other things which the Chief Justice said, I think with great astuteness in this statement and to which I will draw the attention of the Opposition Members later. Amongst the things that he said were, "The money available to the courts has to be provided by the executive and in theory, at least, the executive could express its displeasure with the judiciary by denying it the necessary funds; in practice that has never

happened in either Gibraltar or in the Cayman Islands so far as I am aware. Perhaps problems in this area are brought into sharper focus in small jurisdictions with smaller budgets where there is a tendency for small budgetary matters to be subject to central control. For example, if I require the funds to attend a conference, the Registrar has to submit an application to the Chief Secretary. In theory the Chief Secretary or whoever is consulted could prevent me from attending a conference if it was considered that it was inappropriate for me to do so either because of the content of the programme of the conference or because of what I was likely to say. But these are perceptions of possible ways of interfering with the activities of members of the judiciary and I cannot imagine being denied funding on those grounds. In practice, it would be a question of whether funds are available. In my experience, in both Gibraltar and the Cayman Islands, the courts are adequately funded within the budgetary constraints of the respective governments. Similarly with staffing, with goodwill and a sensible approach on both sides, the courts are reasonably adequately manned". And so, Mr Speaker, I do not want anyone to run away with the notion that the Government do not take seriously the Latimer House Guidelines. What the Government do take seriously and indeed grave objection to, is the idea that a document that is still in draft, that has not been adopted by anybody, that has not been presented to governments for adoption in any part of the Commonwealth should be palmed off to and against the Government of Gibraltar as if it were the Gospel, the handbook, the criteria, the yardstick by which the civilisation of our judiciary and our system for administering justice in Gibraltar can instantly be compared. Mr Speaker, I suspect that the Chief Justices and let us not go back 300 years, but the Chief Justices in the last 30 years who have lived with the same system of funding the judiciary as continues to prevail in Gibraltar and which has not changed, they were not presumably administering over a system which resulted in executive interference with the administration of justice which is not to say that new principles do not evolve and that new techniques and that new concepts do not evolve and, of course, one cannot say that just because the system and certainly I do not say that just because we have had a system that has worked well for 40 or 50 years it cannot be improved on. Of course it can be improved on but certainly I think it is not reasonable to expect Gibraltar to be the trailblazer in the whole Commonwealth on this issue, still less is it fair to suggest impropriety on the part of the Government or somehow improper conduct on the part of the Government for continuing to operate the system that has always existed allegedly in breach of the so-called Latimer House Guidelines which are not themselves adopted by or implemented in any Commonwealth country.

In his address on the occasion of the Opening of the Legal Year this year, the Chief Justice again returned to the question of judicial funding. Amongst other things he said, "My address of last year led to some public discussion. I raised the issue of funding explaining why the judiciary should have control of its own budget subject, of course, to proper accounting and audit safeguards. I attended a meeting of the Commonwealth Chief Justices which immediately preceded the Commonwealth Magistrates and Judges Association Conference in Edinburgh. The Chief Justices made a release after the meeting which was endorsed in an open session of the Association's meeting" – that is the release that I have read to the hon Members – "in commending the Latimer House Guidelines for considering the Commonwealth Heads of State the release welcomed the importance of the guidelines attached to the independence of the judiciary and the provision in the guidelines relating to adequate funding for the judiciary which, when approved by the Legislature, should be under the judiciary's control". Mr Speaker, I regret that there was still not more indication in this year's speech about the exact status of the Latimer House Guidelines. But leaving that point to one side, the fact remains that we have in Gibraltar a system of funding the judiciary which guarantees its independence and leaves it to this House to determine the adequacy of the funding for it and once approved by the Legislature leaves that expenditure under the administrative control of the judiciary. If what the Learned Chief Justice means, although he does not explain it, is that he believes that we should just award a lump sum leaving it, presumably, to him to decide how it is spent, well that is a very radical move away from the

existing system. It is not the basis upon which the judiciary is funded in many other countries, it would give this House absolutely no control whatsoever about how that money is spent. But, of course, this is not the first request. If that is what it means, this is not the first request I get of that sort. Since I have been in this job, I do not know if the hon Member when he was sitting in No.6 had similar requests, but I had also had a request slipped into Police Inspectors' Reports from the UK, Grundy Reports and things of that sort that suggest that the Police budget should be under the control of The Convent. In other words, that they and us should just decide, "Let us vote £7.5 million for the Police this year and then leave it to the Commissioner and The Convent presumably in their Thursday morning meetings to decide how this money is spent". I believe and I do not believe that it raises anything to do with the independence of the judiciary, I believe that the electorate in this community will not understand if this House gives up appropriation control over every part of its budget for which the Government and the House happen not to be constitutionally responsible. When and if it should become the accepted conventional wisdom that that is how it must be and that that Is how it should be and is in countries of the Commonwealth that assert more leadership in these matters than Gibraltar is allowed to do, when all of them adopt a different system and it becomes conventional wisdom then, of course, the Government of Gibraltar will not wish to lag behind but in the meantime I think the system that we have, not only serves the interests of public accountability well but indeed has never been thought to prejudice the administration of justice before.

Mr Speaker, the funding issue, to call it that, first arose in the Learned the Chief Justice's speech at the Opening of the Legal Year in 1999. In it, having launched into the public for the first time the draft Latimer House Guidelines, he went on to say, "The judiciary has encountered one or two instances in the past year where their denial or delay of the release of funds by the Government has had the potential to affect adversely the administration of justice". And I have said publicly outside of this House and therefore I am quite content to repeat inside this House that I find it regrettable that the Chief Justice should have chosen a formula of words that were capable of being misinterpreted to mean something quite different. Clearly the hon Dr Garcia chose to interpret them differently. This, of course, was the first that the Government had heard of these things and indeed but for a coincidence I might have been sitting in the gallery at the Opening of the Legal Year listening to this very public reprimand of the Government by the Chief Justice. In the event, upon hearing of the Chief Justice's words we all put our thinking caps on in Government and wondered what the Learned Chief Justice could have been referring to. We recalled that we had denied a claim to have an entertainment allowance and that as with all Government departments claims for entertainment expenditure are submitted to the Chief Secretary to be paid out of a central fund and some of the judiciary's entertainment aspirations are agreed to and funded and others are not. So we thought, well could he possibly be referring to his entertainment expenses? We were aware, at that time, that the Government had denied supplementary funding for one conference, we had agreed to several others both before and after but we were aware that we had denied supplementary funding to one conference abroad that the Chief Justice had wanted to attend. So we speculated publicly that these might be the two reasons. The Chief Justice subsequently issued a statement saying that those were not the two reasons that he had had in mind thereby leading public opinion to believe that it might be much more serious than entertainment expenses and denial of funds for travel to a conference. I therefore asked the Chief Secretary if he would write to the Registrar, lest there should be any suspicion of interference, and ask him please would he tell the Government what the two instances were that he had had in mind when he made these ambiguous assertions in public about interference in a way that had the potential for adversely affecting the administration of justice. We received a reply, on the 20th October 1999, we subsequently received a reply in which we were informed that the first instance that the Chief Justice had in mind concerned the delay in the decision to finance the agreed proposals for recruitment of members of the Bar to train as potential Stipendiary Magistrates. The second concerned the refusal of funds for his participation in a Judicial Studies Board

Training Seminar on the Access to Judicial Reform and that was it. Those were the two instances of the Government's alleged interference with the judiciary in manner that had the potential to adversely affect the administration of justice. And I would like to report to this House of those instances. The system for the recruitment of Stipendiary Magistrates is well established in Gibraltar. Opposition Members, at least some of them, will be familiar with it. The appointment of the Magistrate is not one of those appointments to which the sections in the Constitution relating to judicial appointments by His Excellency the Governor refer. Those articles of the Constitution do not refer to the Stipendiary Magistrate and accordingly, as the hon Member knows, the Stipendiary Magistrate has always been a Public Service Commission appointment in the usual way. The Chief Justice, the hon Members will recall that we had then in place a contract Stipendiary Magistrate by the name of Mr Mockett who was rapidly reaching the age where he would wish to so give up his post and the question arose of how the Stipendiary Magistrate would be replaced. The Chief Justice held the view, with which I agreed and for which I applaud him, that it was right and proper that such post should be occupied by local persons. There was concern about how such a local person might be found. All of this which I am about to explain to the Opposition Members was eventually overtaken by events because the recruitment process eventually yielded, the current Stipendiary Magistrate who had been in line for the post whilst he had been serving as Registrar, the hon Members I think know who I am talking to, he is the incumbent Stipendiary Magistrate. The Chief Justice, I suppose, came up with the idea that would it not be a good idea if Members of the Bar were invited to come and sit as ad hoc Stipendiary Magistrates for short periods of time to give them the opportunity to see if it is the sort of thing they wanted to do and to give others the opportunity to evaluate their qualities for that post. The Government were asked whether we would be willing to fund this exercise because apparently Members of the Bar were not to be invited to do this on a pro bono basis, they were apparently to be paid a fee for the hours that they sat as Stipendiary Magistrates and the Government indicated that subject to being told what the cost would be, we would be happy to fund this proposal if that is what the judiciary thought was a good way of rooting out good potential Stipendiary Magistrates for the future. Indeed when we were told that the cost was in the order of £9,000 or £10,000 the Government gave our approval for the proposed expenditure. But when we discovered how it was proposed to implement this novel system the Government took objection to how it was going to be done because the purpose of recruiting these lawyers to act as sort of trainee Stipendiary Magistrates was precisely to evaluate them for permanent appointment after the usual recruitment process. The Government therefore took the view that since anyone that had been selected for this new system of temporary service would necessarily have an advantage in the future over other applicants because they would have been given the opportunity to show their metal because others who were going to make the decision about their selection would have had the opportunity to evaluate their performance in this way, the Government took the view that in order to ensure that the eventual permanent recruitment process was fair and transparent, anyone who might want to apply for the future permanent position had to be free to apply for the pre-selection or pre-assessment process because otherwise what would have happened is that if the novel pre-selection process had been done by private selection and that that had been followed by the usual open process for the recruitment of a Stipendiary Magistrate, namely, advertisement, Public Service Commission open to everybody and that system had selected, as it inevitably would, one of the chaps that had shown their metal in this new novel system, the remainder would complain not to the Chief Justice or to the Governor but to the Government that we had perpetrated an untransparent selection process because they had not had the same opportunity as the others to show their metal and to be assessed and they would genuinely feel at a disadvantage. And all these issues arose because when the system for operating this, the financing of which the Government agreed to, was first put to the Government in May 1998 in a letter from the Registrar to the Chief Secretary, it was made perfectly clear that the Chief Justice himself would identify the Members of the Bar to be given the privilege of being allowed, at taxpayers' expense, to serve as temporary Stipendiary Magistrates in the

run-up or as a pre-process to a permanent selection and the Government simply said that we were not willing to fund a process the openness, fairness and transparency of which we would subsequently be criticised for. The Government expressed the view that just as the permanent position subsequently would have to be put open for advertisement so that anyone who wanted to could apply to, so had this preliminary and novel system also to be put open for advertisement so that anyone who wanted to apply to do it could apply to do it. A view, let me tell the House, which eventually prevailed. And so what the Government refused to fund was a system of hand selection by a person who is not the Constitutional authority for the appointment of the Stipendiary Magistrate, of trainee Stipendiary Magistrates in a way that would have given them an advantage in the subsequent selection process. But of course, Mr Speaker, the Government were not obliged to have agreed to any of this at all. The administration of justice in Gibraltar, whether or not the Government are interfering with the administration of justice in Gibraltar, does not depend on the Government agreeing to each and every change of recruitment policy and to fund each and every novel method that is suggested to us. In the event, the Government immediately agreed to the provision of the funds. We then disagreed with everything that I have explained to the hon Members at length about how it was going to be done but the Government could very easily have said, as a matter of policy, "no, there is a long and tried and tested system for appointing Stipendiary Magistrates in Gibraltar and the Government do not want to fund this novel method of doing it". Do the hon Members really think that in those circumstances it would have been fair to say of the Government to the public at large that that was one of two instances in which the Government had delayed or denied funds to the judiciary in a way which had the potential to adversely affect the administration of justice? Well, the Chief Justice might have said, "I asked the Government to let me handpick trainee Magistrates and the wretched interferers did not" but at least people would have known what the issue was rather than use ambiguous phraseology that was capable of meaning all things to all men and indeed we know what it meant to the hon Dr Garcia, if his public statements are anything to go by anyway on the subject.

As I say, Mr Speaker, although we are talking about May 1998, by the way, the whole process was initiated in May 1998, it was eventually agreed in December 1998 that it would be done as the Government had wanted. In other words, as it had always been done, that is to say, there would be an advertisement for these trainees, that would be followed by the ordinary selection process including a Public Service Commission Committee to make recommendations to the Governor for the eventual appointment of a permanent and pensionable Stipendiary Magistrate and the Governor would then make the appointment after consultation, which is a separate issue that I will come to in just a moment. As I say, in the event the project did not get off the ground. We got to the agreement in December 1998, it was then overtaken by events. But the point that I would make for the consideration of the House is that between May 1998 when all this issue started and raged through the summer of 1998 and its eventual conclusion in December 1998, there was an Opening of the Legal Year in October of that year as always. No one said anything about the Government interfering with the administration of justice because five months after the proposal we still had not agreed to do this in the way that the judiciary wanted it done. It was therefore surprising that a whole year later, in the 1999 Opening of the Legal Year speech this issue should apparently, it was not mentioned in terms in 1999 but afterwards by this letter to which I have already referred where the Chief Justice eventually told the Government of the two issues that he had had in mind in 1999 when he did not make the statements this had been one of them. And if the issue existed as a live issue in the Learned Chief Justice's mind the first and obvious opportunity that he had had to flag the issue had been the Opening of the Legal Year in 1998.

Mr Speaker, the second issue referred to in the Learned the Chief Justice's letter as being one of the two that he had had in mind when he accused the Government of delaying or denying funds in a way which had the potential to adversely affect the

administration of justice, we discovered upon receipt of that letter was the failure of the Government to approve in December 1998 a request by the Chief Justice for funds to attend something called The English Judicial Studies Board Conference in relation to the Wolfe Reforms at Warwick University on the 1st to 4th February 1999. At the time of course, Mr Speaker, the Government had not been briefed on the extent and importance of the Wolfe Reforms. Indeed, I have only recently been briefed despite the enormous transformation that it has said to have on the system of administering of justice in Gibraltar on what they actually entail. With hindsight I think it would have been a much better decision to have allowed him to go to this conference but perhaps if the Government had been fully informed about the Wolfe Reform then and now the Government might have made a decision to allow supplementary funding given that there were no funds available at that time from the travel vote anyway and would have required supplementary funding. And the response that was given at that time was, "The Government do not consider that the subject matter of this conference is of sufficient value to Gibraltar at this stage. Funds cannot be approved for this purpose. Please note that funds under subhead for conferences are now fully committed for the remainder of the financial year". Normally what happens when requests for supplementary funding arise against the vote which is already fully booked for the year is in the absence of some enormous necessity for the expenditure it is just turned down especially towards the end of the financial year and that is what happened in this case. So the hon Dr Garcia is I am sure as I had asked him to do at the beginning of my speech, Mr Speaker, now contemplating which of these two momentous events he thinks brought the civil liberties of his fellow citizens in Gibraltar to the point of crisis that he described in his press releases.

Mr Speaker, of course having been a Member of an Opposition myself I think I know how to make due allowance for the sort of political process and the political licence that all Oppositions should have in order to keep the Government scrutinised and holding them to account but I believe there are boundaries to what constitutes proper comment, to what constitutes proper speculation and to what constitutes proper exercise of that political process which is so vital in a vibrant democracy such as ours. The Opposition Member presumably had not overlooked the fact that the Government contained three lawyers, all of them I think enjoying some justified reputation for the roles that they play in private legal practice - I myself a silk, a barrister by profession, committed by profession to the administration of justice and I think the hon Member might have done me the courtesy of at least seeking information from me about what was involved factually in these issues before launching the tirade that he did. I am going to remind him, yes he must not pull faces but I am in a while going to remind him of the extent of the things that he was quite happy to accuse the Government of in complete ignorance of the facts and I think that read now in the cold light of day, read now without a general election around the corner and read now with the benefit of the information that he has and which he could have had if he had sought it from the Government then, I would like to think that he would not be quite as vitriolic, quite as alarmist as he was on the occasion that he did make public statements in that respect.

Mr Speaker, there is a completely separate issue that subsequently arose and that is the question of judicial appointments and the extent to which it had been customary in Gibraltar and separately the extent to which some people think it is proper or not, two different issues, for the Government of the day to be consulted on judicial appointments. Parties close to the Chief Justice and indeed the Chief Justice himself waded into this debate. Amongst the many points that were made were questions turning on the meaning of the word 'consultation'. Does consultation mean that one gets asked before or after? Does it mean that one is the decision-maker or not? Well, I do not think that there is anybody in Gibraltar who speaks English that has any difficulty grasping what the word 'consultation' means. The word 'consultation' necessarily does not mean that the party consulted is the decision-maker. It means that it is one of the parties whose views are sought by the decision-maker before the decision-maker makes his decision. Mr Speaker, I asserted then, I assert now in this House that the practice of consulting the

Chief Minister of the day on judicial appointments has been firmly established in Gibraltar since the early days of Sir Joshua Hassan's tenure as Chief Minister. Therefore when the Government say precisely that, that this is an established and entrenched practice in Gibraltar and the Learned the Chief Justice decides to join issue with the Government by making a public statement saying, this is a press release issued by the Learned the Chief Justice on the 11 November 1999, "It is stated that there is a longstanding practice that His Excellency the Governor consults the Government, through the Chief Minister, before a judicial appointment is made. This is the first that I have heard of such a practice". Well, what is that intended to transmit to public opinion in Gibraltar? Because, of course, if the issue is whether the Chief Justice has heard of the practice or not then his views can be dismissed as the views of the man who is ignorant of the established practices. If the Chief Justice was saying, "Well I do not know if there is such a practice or not, if there is I have never heard of it" then people might have put it all down to the fact that this is a newcomer to Gibraltar who is unaware of the practice but one which was not constructed and the phraseology was not juxtaposed to give people that impression. The impression that it was thought to give was that the statement made by the Government that the practice had existed was not true because "Had it been true I, the Chief Justice of the day would know about it and as I the Chief Justice of the day do not know about it and I say that I do not know about it, ergo it cannot be true and therefore the statement put out by the Chief Minister is false". That is what that statement by the Chief Justice transfers to public opinion. He goes on, "It is stated that there is a longstanding practice that His Excellency the Governor consults the Government, through the Chief Minister, before a judicial appointment is made. This is the first that I have heard of such a practice. My position," - fine, he is entitled to whatever views he likes but he should make it perfectly clear that he is expressing an opinion because it is an opinion that is then actually given effect to almost anywhere in the world as I will explain in just a moment but still the opinion to which he is certainly entitled, he said, "My position has always been that consultation with the political arm of the Government over appointments has the potential to undermine the independence of the judiciary." And I say to myself, hang on what does this mean? "My position has always been that consultation with the political arm of the Government over appointments has the potential to undermine the independence of the judiciary". And I ask myself, what is this, a colonial point or a principle of judicial independence? Because if it is a principle of judicial independence as opposed to a colonial point then it has to be equally applicable in non-colonial countries because something which is perfectly acceptable in non-colonial countries does not become interference with the judiciary because it has the potential to undermine the independence of the judiciary just as happens in a colony, it cannot be politically undermining of the judiciary for a humble colonial Chief Minister to be even consulted, let alone appoint, about the judicial appointments when in England the Prime Minister makes the appointments of the highest Judges in the land, namely the Law Lords. I say to myself, let us look around because my position is that whatever the practice in Gibraltar may have been, if this business of even being asked one's opinion before somebody else makes the decision on the appointment is so heinous, we must not do it. And I instructed to search around and I said, hang on who appoints judges in the United Kingdom? Well the Law Lords, who are the most senior judges in the land are appointed by the Queen on the advice of the Prime Minister which to anyone who is familiar with the euphemisms in the British Constitution means that he chooses them. The other judges are appointed by the Lord Chancellor who is the Justice Minister and sits in the Cabinet as a Minister of the Crown. And I say to myself, how can it be a breach of the fundamental principles of the separation of powers for the Chief Minister of Gibraltar even to be consulted when in the United Kingdom the appointments themselves are made by politicians and who appoints judges in the mother of all democracies the United States of America, as we are now discovering with all the television coverage on the Florida recount? Politicians make appointments, Presidents of Supreme Court Judges, State Governors of State Supreme Court Judges and no one says that the involvement of politicians in the American judicial appointment system has the potential to

undermine the independence of the judiciary. And who appoints judges in Spain and who appoints judges in France and who appoints judges in Germany, who appoints judges in the whole of the democratic western world? Therefore I came to the conclusion that the Chief Justice was wrong because the Chief Justice was not making a point of the principle of the separation of powers. I believe the Chief Justice was making an exclusively colonial point, that colonial Governments should not be involved even through consultation on the appointment of judges because it happens everywhere else in the world and no one thought it had that effect there so why should it have this effect here? Of course, I have no difficulty in accepting the proposition that what is safe and acceptable in a larger country becomes more difficult in a small country but, Mr Speaker, no one in Gibraltar, I am sure the previous Government have never articulated or advocated it, certainly this Government have never articulated or advocated the idea that the Government of Gibraltar should appoint the judges. I have no desire to appoint judges, I have never expressed the view that the Chief Minister should be the appointee of judges, indeed when the Government drafted our first constitutional ideas paper which we put to the British Government in the private discussion we had with them two years ago, the Government's own suggestion was for the establishment of a Judicial and Senior Appointments Commission. And then it was said again, during our research into how these things happen in other countries, I said, well how does it happen in other colonies? Having now established that it does not happen but it seems to be perfectly okay in the great metropolitan countries for these things to happen without anybody losing sleep as to whether civil liberties are under assault, how does it happen in the colonies and the very first British colonial constitution that we pick up to look at actually requires the Governor to consult, not just with the Chief Minister but with the Leader of the Opposition before he appoints the Chief Justice and that is the Constitution of Bermuda. It used to be, prior to 1979, that the Governor only had a requirement but this is now a formal requirement. In Gibraltar there is no formal requirement, he does so out of established practice but the Constitution does not require him to do it. In Bermuda, until 1979, he was formally required to consult with the Chief Minister and when they amended the Bermuda Constitution in 1969 it was not to say, "What have we been doing for the last 30 years consulting the Chief Minister of Bermuda on the appointment of a judge in a way that has the ability to undermine the political independence of the judiciary? Let us delete "Chief Minister" immediately". No, in 1979 they amended to add the Leader of the Opposition, another politician amongst those that need to be consulted. And I say to myself, how can a Chief Justice of Gibraltar engage the Government of Gibraltar in a public debate six months before a general election on the basis that the Government's assertion that there has been consultation in the past is false and if there has it is improper when there is a colony that has had it for 25 years and the great colonial master of Bermuda which is our colonial master has happily given them a Constitution that says that and I presume that the Foreign Secretary is not consciously presiding over a system which allows for a politically tainted judiciary simply because the Chief Minister is constitutionally required to be consulted on the appointment of the Chief Justice. But no, that was not enough, all the satellites close to the Chief Justice and his friends immediately started writing letters to the Chronicle trying to divert public attention and minimise the significance of the revelation that if something was a constitutional requirement in Bermuda the very same thing in Gibraltar could not be the most heinous act of political interference in the administration of justice.

How had this issue arisen in the first place, the hon Members might be interested in asking themselves because of course this was not in the 1999 Opening of the Legal Year speech, this business of judicial appointments. Well, I will tell the hon Members how the question of judicial appointments arose, a debate into which the Chief Justice then waded quite happily in public. On the 12th May 1997 I was happily sitting in my office during the lunch hour as is my practice, working and I had the radio on in the background listening to GBC lunch time news bulletin and I learnt to my delight that His Excellency the Governor, then Sir Richard Luce, had appointed two new Justices of the Peace and I said to myself, this is good news but

news nevertheless. And I said to myself, can it really be the case that the Chief Minister of Gibraltar, elected by the people of Gibraltar to preside over their Government discovers the appointment of people to judicial office in Gibraltar on the news? But of course I was then a newcomer to this job, I had only been there a year and of course I did not know, it struck me as odd but I did not know whether this was the usual practice. I could not imagine my hon predecessor having sat back and tolerated that sort of position. So I do what every Chief Minister should do in such circumstances and that is to seek advice from the Senior Civil Servants who have the advantage of continuity in post and the advice that I received from my Senior Civil Servants was that indeed this was not usual, that this was a departure from well established practice which had always been that the Chief Minister of the day is consulted on judicial appointments which, of course, does not mean that his permission is obtained, which does not mean that the Chief Minister as opposed to the Governor makes the decision, it simply means that the Governor consults with the Chief Minister before making judicial appointments. And I said to myself, well I am not one to preside over constitutional retrogression, indeed I would like to preside over constitutional advancement and therefore I do not think that if something has been going on for three or four decades that now is the time for the elected Government of the people of Gibraltar to be deprived of a role in the community, however limited it might be through the process of consultation, which they have always enjoyed and to boot to be unilaterally withdrawn without so much as a by your leave or an indication that it could cease. Of course, we subsequently discovered where Sir Richard Luce probably got his advice for this unusual and unprecedented view, that there should be no consultation with the Chief Minister in Gibraltar on judicial appointments. This is what the Chief Justice who was presumably advising Sir Richard Luce about whether or not he should consult me, I will quote from his speech to this Latimer House Guidelines Conference, "To what extent should the Governor consult locally on appointments. The Governor is, of course, the Head of the Executive but is removed from local politics". So Dr Garcia should bear in mind that when it is said that it is important constitutional principle that there should be separation of powers between the Executive and the judiciary, that only applies in countries that are not colonies because, of course, what that is converted to in colonies is that politicians, as opposed to the Executive, should not have any involvement in the appointment of judges because in Gibraltar judges are appointed by the very person whom the Constitution says is the Head of the Executive, His Excellency the Governor. So we must not say that the separation of powers between the Executive and the judiciary is thought to be important, what he and I are saying is that it is important apparently that he and I, as local politicians, should not have a say in these matters but not the Executive because our Constitution says that the Executive is precisely the Head of the Executive is precisely the man that appoints the judges, namely the Governor. It will be natural for the incumbent, that is to say, the Governor to want to pass across the other members of the Executive, by which I suppose he means the humble elected politicians, the name of a potential appointee particularly if the potential appointee is or should be known to the members of the Executive if only to ascertain if there is anything known about that person which ought to be taken into consideration. My view is that it is right and proper for the Governor to inform the other members of the Executive, by which he means the elected Government, about a prospective appointment but that he or she should not go so far as to formally consult. The dividing line between formal consultation and requesting formal approval is too fine and in a small jurisdiction it would be dangerous for politicians to become part of the formal appointment process to the judiciary. So there we have it do we not? We have the source of the departure of three decades of consultation with the Chief Minister of the day on judicial appointments and it all comes about because unlike all his predecessors who apparently will not think that this was terrible for the independence of the judiciary, this Chief Justice believes that in his opinion the line is too fine between consultation and permission. Well, I do not know how much power and influence the Leader of the Opposition exercised over the Governors that he served with but I have not yet come across a Governor who was unable to distinguish between formal consultation and requesting my formal approval nor I think is the distinction quite

as fine as the Learned the Chief Justice suggests. Consultation means consultation and approval means approval and decision-making means decision-making and they are three perfectly different principles. Certainly I have never advocated for approval, I have never suggested that I should be the person who appoints. What I have said is that if there is three decades worth of precedent for consultations with the Chief Minister of the day on judicial appointments it should not be unilaterally and suddenly withdrawn without any form of discussion or consultation because that is constitutional retrogression and not constitutional advancement and that is all that has occurred in this matter. In the public statement that he issued in Gibraltar he went on to say, "Having said my position has always been that consultation with the political arm of the Government over appointments has the potential to undermine the independence of the judiciary, my view is borne out by the practice in other overseas territories where the Government are informed once an appointee is selected and is not consulted over the appointment". In other words, having said that what the Government were saying about consultation must be wrong because he had never heard about it, he goes on to say, it must be wrong because it does not happen anywhere else amongst the colonies. But of course he had not done his research properly because he was then taken by surprise when the Government published our discovery that far from it not being the practice in any other overseas territory, in Bermuda it was a constitutional requirement, it was obligatory on the Governor to consult the Chief Minister on the appointment of the Chief Justice, the most senior judge in the land. He then went on, "There is a marked distinction between the Government being informed of a potential appointment and being consulted over such an appointment". Well, there is a distinction and the distinction between being informed and being consulted is as clear in English as the distinction between being consulted and being required to approve and I do not see why the Chief Justice thinks that the line between consultation and approval is too fine but that the line between consultation and information is perfectly clear. They are both perfectly clear and I have yet to meet anyone who does not understand the meaning and limitations of the concept of consultation. He went on to say, "It would be a bad day for Gibraltar if judges and magistrates were to carry out their functions in fear of representations being made for non-renewal of their contract". Well, all I can say to the Learned the Chief Justice is that every day is a bad day for Bermuda, every day apparently is a bad day for Bermuda because in Bermuda the Chief Minister and the Leader of the Opposition are indeed consulted. And he went on to suggest, "The Gibraltar Constitution sets out clearly a separation of powers between the Legislature, the Executive and the Judiciary." I think that is a constitutionally bold statement given who is the Legislature and who is the Executive in Gibraltar under our current Constitution. "Enshrined in the Constitution is the concept of the independence of the judiciary and Gibraltar must maintain a truly independent judiciary" - as if somehow it was under assault by the simple issue of consultation – "Judicial independence is not only undermined by improper influence in individual cases, it can be undermined by, amongst other things, political interference in judicial appointments". And I want to know why judicial independence is not undermined in the United Kingdom and in the rest of the world by political interference in judicial appointments where the appointments are political. Yet here in Gibraltar the Government have to suffer the public utterances of the Chief Justice of the day in this vein just because the Government are to be consulted by the colonial Governor who then makes his decision as he pleases. I say, what is sauce for the goose has to be sauce for the gander and the difference between the goose and the gander is not whether we are a colony or not. Principles of separation of powers and of judicial independence do not depend on whether we are a colony or an independent country. I agree with the Chief Justice's views in other respects that judicial appointments in Gibraltar should be made by an independent Judicial Appointments Commission. Indeed I would go further and have gone further in the ideas that the Government have put together that it should not be limited just to judicial appointments but indeed it should include a whole series of appointments which should not be made by the Governor because of its colonial overtones but nor should they be made by the Government of the day and they include the

Attorney-General, insofar as it relates to his Director of Public Prosecution function but no other; the Principal Auditor, who is there to keep the Government audited; indeed the Registrar of the Supreme Court, who carries out quasi judicial functions. Therefore whilst disagreeing profoundly not just with the substance of his statements which we have demonstrated to be misconceived by pointing out to practice in other countries indeed to other colonies, but the Government took grave umbrage at the manner in which the Chief Justice, even though he is wrong, engaged the Government in public battle on issues which had not been canvassed privately with the Government before because I understand one can engage governments in discussions privately and that governments can be so dangerously mistaken in their view that no amount of private discussion or private persuasion serves to convince them and that there comes a time when somebody who has the duty to uphold the independence of the judiciary says, "I now have to go public because you guys are as stubborn as mules". This is not the case here. This is engaging the Government of the day in politicised public debate on issues that had never been raised with the Government in private before and I believe that that was wholly improper conduct on the part of the Chief Justice and we said so in public without the privilege of this House, that the Chief Justice's statements went well beyond the bounds of proper judicial comment.

Now that the House is more or less aware of the issues and the facts here, I would like to review some of the Opposition's public statements on this matter. On Friday 15th October sensing, I am sure, that here was an issue in which the Government's reputation could be subjected to assault in the minds of the electorate, the hon Dr Garcia and his Liberal Party lost no time in putting pen to paper. He said in a public statement on the 15th October, "The Leader of the Liberal Party, Dr Joseph Garcia, has said that the Liberals are seriously concerned at claims of potential or perceived interference by the political GSD Government with the judiciary in Gibraltar" – it would have been enough to have just said 'the Government'. If he had been in good faith he would just have said 'the Government', "potential or perceived interference by the political GSD Government". I do not know what other Government Gibraltar had at the time unless of course he was referring to the Governor part of the Government. "This is a very serious matter and a full and independent public enquiry should be initiated without delay", immediately, without even knowing what the issues were, what the facts were and without therefore being able to form a view of whether the facts warranted a public enquiry. "In certain countries around the world that are less enlightened" – presumably he means less enlightened than Gibraltar – "like dictatorships" – to see if he can attach the concept of dictatorships to the Gibraltar Government by juxtaposition of irrelevant words – "in certain countries around the world that are less enlightened like dictatorships, it happens that Governments interfere directly with the decision of judges who pronounce judgements based on political considerations rather than the application of the law. However, there are more subtle ways in which the administration of justice can be influenced and one such way is through Government controlling the funds that they release". Of course, he has now been in the House long enough to know that I do not vote the funds, he votes the funds with me and I do not release the funds, the Controlling Officer releases the funds against the sole criteria of whether the funds are to be applied for the purpose that he and I voted them for. So when he talks about dictators and subtlety and controlling the release of funds he should know that he is talking in equal measure about himself as about me. "The Liberal Party has long complained at the erosion of civil liberties in Gibraltar by the GSD Government". So here we were on the 15th October in complete ignorance of the facts which he has now been informed of and Dr Garcia was pronouncing that there was an erosion of civil liberties because the Chief Justice had not gone to a Conference in Warwick University for three days in February 1998. "It would be a grave and serious breach of the Constitution if the Chief Minister or the Government were perceived to interfere or potentially interfere with the judiciary in such a way". On the 18th October, just three days later, such was the importance that he attached to this unfolding and breaking news that on the 18th October again he put pen to paper, "The Leader of the Liberal Party, Dr Joseph Garcia, is astonished at the hysterical reaction

of the Government to the comments made by the Chief Justice during the Opening of the Legal Year". I do not know how the hon Member can think that my reaction is hysterical and at the same time believe that the matter is so important that civil liberties of Gibraltarians are at stake. "As is now the custom Mr Caruana and his propaganda machine" – all the sort of pre-agreed little clichés, all the political buttons that they were then busily pressing in the hope of persuading the electorate not to increase our majority – "As is now the custom, Mr Caruana and his propaganda machine react by hurling personal abuse and questioning the legitimate motives of the party instead of concentrating..." I have to tell the hon Member that there is no objective reading of these statements measured against the fact which enable one to come to any other conclusion other than questioning his motives. "The Liberals consider that it is extremely important to place the comments made in their proper context" – well I only wish he had. The best way to place remarks in proper context is to take the trouble to find out the facts before one makes public comments about them. "The Liberals consider that it is extremely important to place the comments made in their proper context and to consider what the Chief Justice said on its own merits without allowing a hysterical outburst by an intolerant Chief Minister to obscure the seriousness of the situation. The Chief Justice was referring to the Latimer House Guidelines" – which presumably the hon Member did not have a clue what they were, never mind suffice it to say that the Chief Justice had referred to them – "and drew attention to his speech to a number of principles including that there should be 'sufficient funding to enable the judiciary to perform its functions to the highest standards should be provided'". Was the hon Member trying to say to the people by saying that, that there were not sufficient funds to enable the judiciary to perform its functions to the highest standards should be provided? Is he doubting for a minute that the Gibraltar Government provide sufficient funds for that purpose? Because if he is I have never heard him express that view in any of the budget sessions that he has participated in. I have never heard him challenge the vote for the judiciary on the basis that it is insufficient. "And that the administration of monies to the judiciary should be under the control of the judiciary". Well it should not be under the control of the judiciary, it should be under the control of this House in the appropriation sense and once appropriated by this House for specific purposes it should then be under the administrative expenditure control of the judiciary, which is the case. "The Chief Justices of the Commonwealth were all agreed" – they were not all agreed, the ones that were agreed were the ones that were there – "that those who control the judiciary's purse strings exercise enormous influence and have the capacity to undermine the judiciary's independence". That includes us both and everybody in this House, apparently. Then thinking that the matter was going well for him politically and the end of the fourth year in a term of office, this was the moment to press home the political advantage that this situation offered him. On the 15th November again he put pen to paper. This time to announce to the world that he had written to the Foreign Secretary, no less, on the continuing allegations of political interference with the judiciary in Gibraltar. Who on earth had said anything about political interference with the judiciary in Gibraltar? Not even the Chief Justice in his ambiguous choice of words, regrettable as they were, had said anything about political interference with the judiciary in Gibraltar. This is a figment of the hon Member's imagination, pure fabrication on his part. And not content with having invented the concept of political interference with the judiciary in Gibraltar, he went on to say to the Foreign Secretary that it was necessary for him to hold an enquiry on the matter. Dr Garcia has told Mr Cook that the appeal to London was because calls for a full and independent public enquiry or for the Governor to intervene to find out what had happened had fallen on deaf ears. Well, it had not fallen on deaf ears. The Governor, unless of course the hon Member thought that the Governor was in my political pocket and helping me to politically interfere this heinous GSD political Government, that the Governor was also a co-conspirator in this alleged political interference with the judiciary, the Governor put out a public statement saying that he had seen absolutely no evidence of it and he is the man who makes the appointments and he is the man to whom, presumably now, the Chief Justice, the previous ones used to go to other places, this one goes to the Governor for complaints, if any, about funding. Certainly none

reached me. It should have therefore come as no surprise to the hon Member that the Foreign Secretary preferred to follow the judgement of the Governor rather than his own hysterical call for a public enquiry. He added that these allegations "of attempts to interfere with judicial appointments". What attempts to interfere with judicial appointments? What evidence did he have at the time that he made his public statements that anyone had attempted to interfere with judicial appointments or that anyone had said that somebody was attempting to interfere with judicial appointments. They were false, fabricated, irresponsible statements of which only the hon Dr Garcia, since he has been in politics, has shown an inclination to write. He added, that these allegations "of attempts to interfere with judicial appointments and the use or denial of funds to control the judiciary are very serious matters". So now from the two issues that the Chief Justice mentioned and which I have explained to him, without bothering to find out the facts, not content to tell everybody that civil liberties in Gibraltar were under threat, he then embellishes the whole thing to tell the public and the Foreign Secretary that the Government were attempting to interfere with judicial appointments and the use of denial of public funds to control the judiciary. "A dossier sent to Mr Cook traces every step so far in relation to the continuing controversy". What he means is that the dossier contained all his scurrilous statements that is what the dossier included, nothing to do with tracing every step, he did not even know what the steps were, he did not even know what the facts were let alone the steps. Dr Garcia states that he is "very concerned at the situation which has developed in Gibraltar over the past month or so over claims of potential political interference with the judicial system in Gibraltar on the part of the Gibraltar Government". These are the sort of things that he is quite happy just to toss into the public domain. "Serious allegations against the GSD Government have been made by the Chief Justice of Gibraltar and those allegations have been backed up with examples of specific cases". Well I have done it now but he did not have any examples of specific cases at the time that he wrote this statement, no. On the 15th November 1999 he did not know what the specific cases were, he had no idea what the specific cases were, none. I have just told him what the specific cases are. "There are very serious democratic implications in the notion of politicians running the affairs of the Law Courts in the way the Chief Justice has described". When had the Chief Justice described anything that enabled the hon Member to make the public statements that politicians were running the affairs of the Law Courts? I do not know whether he is squinting because of the poor light or whether he doubts whether I am reading from one of his press releases. I have it here in my hand. It is in the unmistakable letterhead of the so-called Liberal Party of Gibraltar who were not showing very much liberalness when they wrote this statement against the Government.

MR SPEAKER:

The public is excluded. If they stay I will adjourn for 10 minutes and I do not want them back. We will recess for 10 minutes and they are not allowed back.

The House recessed at 4.55 pm.

The House resumed at 5.10 pm.

HON CHIEF MINISTER:

Mr Speaker, I am obliged, I wonder whether I might just be allowed to say, for the purposes of Hansard and indeed for the benefit of those who might have been listening to the debate, or whether Mr Speaker would himself prefer to say it, the reason why he cleared the House lest anyone who was not here should misunderstand or indeed think that it had anything to do with the debate itself.

MR SPEAKER:

It had nothing to do with the debate, merely that I think about four persons took out placards with something in connection with Tireless. The important thing is that the public is allowed here on sufferance, let us put it that way, and they have got to behave.

They have not done anything really very bad but it is not allowed and the best way to get rid of it is just to adjourn.

HON CHIEF MINISTER:

Certainly speaking for myself, Mr Speaker, I entirely agree with Mr Speaker's ruling. It would not be tolerated in any Parliament in the world and should not be tolerated in this one. It is an abuse of the public gallery.

Mr Speaker, I was just concluding my review of the hon Dr Garcia's various press statements in relation to this matter and having told public opinion and the world at large that there are very serious democratic implications in the notion of politicians running the affairs of the Law Courts in a way which the Chief Justice had described which, of course, he had not done, he then goes on to say, "There is a risk that ordinary people could lose confidence in the legal process if they think that the Government interferes in the way that our Senior Judge has explained". The only person who was in risk of causing ordinary people to lose confidence in the legal process was the hon Member by his false, irresponsible, politically self-serving, scandalous statements. This was on the 18th October, three days after this one, this is the last of his many statements that I shall be reviewing, he says, "In defending political involvement in the appointment of judges, Mr Caruana and the GSD Government are going contrary to the Latimer House proposals for the Commonwealth and also contrary to the stand taken..." Why? Because I was defending a continuation of a practice which every Chief Minister before me in modern political history in Gibraltar had enjoyed? Rights which are much less in relation to the judicial appointment system than politicians in England enjoy and in the rest of the world? If political involvement at the level of consultation only, humble consultation, "Chief Minister this is what I propose to do. Express your view but of course I will do what I like anyway", if he thinks that that is in breach of the Latimer House Guidelines he should not be writing to Mr Cook telling him about how bad things are here, he should be writing to Mr Cook giving him a lecture about how he has got to change the English system which is in breach of the Latimer House Guidelines the way he is interpreting them but of course nobody else does. And then ruffled by what the Government had said about Bermuda, the judge here says it is wrong for Chief Ministers to be consulted because it breaches the principle of the separation of powers and it can lead to political interference in the judiciary. And I say how so? In Bermuda it is done as a matter of constitutional obligation and he says, "The reference to Bermuda are a complete red herring and we are in Gibraltar and not in Bermuda and we are governed by our own Constitution and not by theirs." If it were not so serious it would be laughable for his limpness and his disingenuity. At the very best case for him it suggests that he does not understand the point at all because the Government were not saying, "Consult me because my Constitution says that you must" our Constitution does not say that, our Constitution is completely silent. What the Government were saying was, "How can it be wrong in principle in Gibraltar if it is constitutional requirement in Bermuda?" And he said, "We are not in Bermuda, we are in Gibraltar". Mr Speaker, unluckily for him the people of Gibraltar did not believe a word of it because as we can well imagine if the people of Gibraltar, a sensible and wise community that they are..... *[HON J J BOSSANO: Because of the results.]* No, they have shown consistently in the past they have shown that they are a wise community. If that community had believed a single word of all the rubbish that it was being fed by the hon Member they would not have returned me back to office and they certainly would not have returned me back to office with a large majority unless the hon Member thinks that the people of Gibraltar reward the systematic dismantling of civil liberties, political control over the affairs of the courts, political interference in judicial appointments and political manipulation of the administration of justice, unless he thinks so lowly of the people of Gibraltar that the hon Member thinks that they would reward any of that with an increased political electoral majority. I hope that the hon Member learns his lesson. Public opinion in Gibraltar cannot be deceived with stupidities, they can be fed stupidities but they cannot be duped by it and there is, I believe, a valuable lesson for the hon Member to learn if he has an aspiration to gain the respect and the trust of the people of Gibraltar in a future political career here.

Mr Speaker, whilst other issues have been rehearsed in public in relation to the behaviour of the Chief Justice, the Government have remained scrupulously quiet and detached. Whilst those whose constitutional obligation it is to evaluate the conduct and to decide what action, if any, needs to be taken, made their decision. And the Government have remained silent in the face of the most provocative and outrageous statements all of which I hereby assert here in this House today have been kites flown on behalf of interests linked to the Chief Justice to distract public attention from the only issue then in the public domain which was his failure to comply with his legal obligations in relation to the income tax and social security liabilities of his employee.

In the meantime and so as not to be drawn into a further smokescreen, the Government have sustained and suffered the most outrageous allegations, not just about the Government but indeed playing with the interests of Gibraltar. The Panorama of the 30th May to 4th June reports, purporting to quote Mrs Schofield, "They have dragged me into the fight. I am now fighting for myself" – I do not know who they are but I suppose it just conveniently leaves it open to speculation – "I have reached a point where I feel we are being harassed so much. They have brought the fight into my house" – I do not know who they are or what the fight is – "This is affecting our family life. They" – I do not know who – "are trying to discredit my husband. They are trying to hound him out of office". The Government chose to bide their silence so as not to interfere with or become embroiled in the other issue which was under investigation by His Excellency the Governor at the time. The Sunday Express in a part of their article which they have not withdrawn or even been invited to withdraw, unlike other parts, quotes, "Last October the Judge also upset Chief Minister Peter Caruana. He claimed the Gibraltar Government was interfering in the judiciary by denying or delaying the release of funds for his department. Anne Schofield has accused the Government of tapping her phones and says allegations about her former housekeeper are part of a smear campaign" – they are either true or not but if they are true they are not a smear campaign. One cannot smear everybody else with outrageous and unproven allegations in an attempt to protect oneself from incontrovertible facts. She said, "I am going to fight for what I think is unfair. They cannot shut me up". I do not know who was trying to shut her up, the Government have played no part in that respect. So there we are, the world at large was now consuming all of that. Obviously the Government took a more serious view of these reports given that they were now being circulated internationally where the damage to Gibraltar was potentially very real and so the Government wrote to Mrs Schofield and said, in an article published in The Sunday Express on Sunday 4th June 2000, "It is reported that you have accused the Government of tapping your telephones. I would be grateful to learn whether you made a statement to The Sunday Express accusing the Government of tapping your telephones and if not, whether you will let me know what steps, if any, you propose to take to rectify the matter". The response was not, "How dreadful, of course I did not mean it was the Government, I meant it was MI26 or MI38". Her reply actually was, "I have not spoken to The Sunday Express either directly or indirectly". Carefully chosen words but the reality is that The Sunday Express was just repeating what is attributed to her in the local Panorama newspaper. And then, of course, whoever it was that was talking to the press, if it is to be on the basis of what she says to the Government she was not talking directly or indirectly, of course that is not to say that somebody else was, but then The Sunday Business of the 11th June 2000, "Foreign Secretary Robin Cook is under growing pressure to intervene in a row between the head of his judiciary and the local Government". In June 2000 there was no row between the Government and the judiciary. In June 2000 the only issue affecting the judiciary was the one that I referred to earlier which does not affect the judiciary but the personal conduct of its most senior officer. I was not having a row, the Government were not having a row with anybody in June 2000 which is the date of this article. In the latest twist to the row, having conveniently linked the row between the judiciary and the local Government, the very next sentence reads, "In the latest twist to the row, Derek Schofield, the Chief Justice, has called the Police to investigate claims that his telephones are being tapped. Senior politicians and lawyers

fear the issue threatens the Rock's reputation as a financial centre". Well one can be sure it does. I just wish the hon Member would have borne that in mind, I certainly do not hold him responsible for these articles but other people who equally participated in other aspects of this dispute are responsible. "Schofield has made no public comment about the alleged tapping but has told friends he believes he is under surveillance because of a clash with Gibraltar's Chief Minister, Peter Caruana, over claims of political interference with the judiciary's independence". There we are, somebody has succeeded in making an omelette or a salad, if we prefer, out of the funding row, all the rows and the political interference, and the surveillance and the phone tapping to give the impression that the Government of Gibraltar are not only rampantly interfering with the judiciary but as if that were not all serious enough, tapping the Chief Justice's telephone as well. His wife, Anne Schofield, a lawyer says that they have also received harassing telephone calls and made a complaint to the Police last October. She told the local Panorama newspaper 'they' – 'they' is after the only party that has been mentioned in the article so far is the Chief Minister and the Gibraltar Government, there is not even an oblique reference to anyone that the Opposition Members might have had in mind when they have thought about who they might be in the context of phone tapping. "They are trying to discredit my husband. They are trying to hound him out of office." By tapping his telephone? First of all, we are supposed to accept the allegation that the Government are tapping the Chief Justice's telephone and then that as we are supposed to accept that it is part of some conspiracy to hound him out of office at a time when the only issue was an issue being investigated by the Governor in relation to the employment by the Chief Justice of domestic staff. I say that this is the shameless flying of kites, raising of smokescreens by unscrupulous people who did not care a jot about the damage that it could have done to Gibraltar, its reputation and its economy, all in a crude and shameless attempt to distract public opinion from facts that, in any way, did not go away. But whoever is responsible for this collage wanted to do justice to the hon Member as well because after associating the Government with phone tapping and harassing phone calls and hounding him out of office and discrediting him, et cetera, et cetera, Joseph Garcia, Leader of the Gibraltar Liberal Party which is in coalition with Bossano's Gibraltar Socialist Labour Party said, "It is obviously very worrying for people here in terms of civil liberties". He shakes his head but he did write to the editor saying, "What nonsense"? No, it all served a purpose at the time or they thought it would serve its purpose. Peter Isola, who also participated in this debate hon Members will recall, in defence of the Chief Justice and his views, Peter Isola a lawyer and former Opposition Leader said, "An enquiry is needed to protect the Rock's reputation". What is needed to protect the Rock's reputation is not an enquiry, what is needed is that selfish people should not make scandalous and unfounded damaging statements just to help themselves in relation to another issue, that is what is needed to defend Gibraltar's reputation. The whole thing, having gone through that now, then the article finishes, "Schofield clashed with Caruana last October when he said that the Gibraltar Government were interfering with the independence of the judiciary by controlling its budget". Well, of course, the Chief Justice had not said that but I know who has. I know who else said that in public statements, I never heard the Chief Justice say this. He later condemned the local Government for claiming it should be consulted about the appointment of Stipendiary Magistrates. Well, if nothing else, that last sentence is confirmation that I have not done the Chief Justice an injustice by reading too much into his views about whether the Government should be consulted or not because the editor of The Sunday Business also regarded it as a condemnation of the Government. There we are, Mr Speaker, a ripe collage, pottage, let us see if we can mix up maids with funding and funding with telephone tapping and telephone tapping with surveillance and surveillance with blurred images of people walking up Mount Road and let us see if we can rope in the Government and try and paint a picture of Gibraltar which may look like some other jurisdictions in Africa in which I have certainly never practised law before. But certainly those who have done it have shown an extraordinary reckless disregard for the interests of Gibraltar which they have done on the basis of pure speculation. There is not one solid fact because if there were no one is suggesting that

serious facts should be swept under the carpet just to protect Gibraltar's reputation. But what there is in all of this the facts are the ones that I explained to the House about the Warwick University Conference and that the choice of apprentice magistrates and the maid business. Those were the only facts, everything else has been pure smoke. It is not until this opportunity after the Governor had made his decision in relation to that other matter, the Government had kept our silence in order not to complicate that position but now that that is over, I think the Government have a duty to ourselves, to our own reputation, to our own sense of integrity and indeed to public opinion in Gibraltar to speak openly, clearly about what we think has been happening in the last 18 months in this respect. I commend the motion to the House.

Question proposed.

HON DR J J GARCIA:

Mr Speaker, it is always very interesting to witness the theatrical performances of the Chief Minister and let me assure him that should he ever need somebody to nominate him for an academy award I would certainly be the first one to put down my name as a proposer.

The independence of the judiciary is a very serious issue. It is something which should be handled with more tact and with more diplomacy and I think perhaps the Chief Minister has charged into this as displayed with the tact of a charging rhinoceros. In general terms there would be few people in Gibraltar who could argue with the gist of the motion that is being debated by this House today. It is therefore very sad and very regrettable that the Chief Minister should somehow spoil the motion and replace the prospect of harmonious unanimity by a more disharmonious one, thanks to him. I say that because it is important to draw a distinction between the text of the motion and the text of the speech that we have just heard. The Opposition generally would subscribe to the text of the motion. It would hardly come as a surprise to anyone that we do not subscribe to some of the things which the Chief Minister has said either directly or by implication and I reiterate that it is deeply lamentable that the Chief Minister should be more intense in causing division and strife than in behaving in a more statesmanlike manner taking a broader and less personal approach to this issue in which as a lawyer and a Queen's Counsel he has a clear interest. It is also important to establish the reasons why this motion has been tabled at this moment in time. There may well be those who see in this approach an attempt to intimidate or perhaps even to get one over the Chief Justice of Gibraltar for what happened over a year ago. And that is reprehensible, Mr Speaker, and it is totally wrong to use the opportunity to take a swipe at somebody who is not present in this House to speak for himself.

The Chief Minister continues to behave as if he were the Opposition and this side of the House were the Government. His role is not to use the privileges of his position to launch poisonous attacks on all and sundry, his role is to defend his track record to defend the actions of his Government. We all know by now that he did get very upset when the head of the judiciary in Gibraltar gave his version of events last year on a number of incidents which he thought had the potential to adversely affect the administration of justice in Gibraltar, just as he got very upset when I called for an independent public enquiry into those same claims. Indeed, the Chief Minister seems to be more concerned that I wrote to Cook and he knew nothing about it than about Spanish inspectors coming to Gibraltar to look at the nuclear submarine behind his back which he also claims to have known nothing about until he was telephoned.

Mr Speaker, for the benefit of the Chief Minister, let me explain that any citizen or any Member of Parliament of Gibraltar, of the United Kingdom or from anywhere else in the entire planet is free to write to Robin Cook. It is not a crime and is entirely understandable given the brick wall that calls for an enquiry met with locally. On the other hand, hypothetically speaking of course, it is entirely understandable that anyone with an approach that verges on control mania would have been sent into a frenzy by something like this which he did not control. One can

only but imagine what the Chief Minister would have done had a different or the same Chief Justice made similar remarks with a different person as Chief Minister and with the Chief Minister, the hon Mr Caruana as the Opposition Leader, writing to Cook would be nothing compared to the way he would probably have exploded sending ballistic missiles by post to anybody he could think of and he would have seen that in our colonial Constitution, the Constitution that we are now trying to change, he would have seen that it establishes a line of Government, Governor and Foreign Secretary and after that Prime Minister and all the rest of them to who he could have appealed for an investigation. And all this begs one or two questions. What does the Chief Minister have against public enquiries? Why should the people not be entitled to a full and independent investigation of the truth? Why does anyone who dares to speak out against the Government risk being subjected to this kind of abuse? The hon Mr Caruana should stop being so destructive.
We asked him recently with regard to the dismissal of the consultant radiologist in St Bernard's Hospital, Dr Rassa, in highly controversial circumstances, how the Government again brushed aside the possibility of an independent investigation of the facts. Instead they set themselves up as judge, jury and executioner. They have become the infallible exponents of what is right and what is wrong with the important caveat that everything is right so long as they are the ones doing it. And it is they who are the sole arbiters of who or what is right and who or what is wrong. What do they have to hide and what are they scared of? He said earlier that this kind of comment on the Chief Justice affair was not within the boundaries of what Oppositions do. Yes, that is what he said but the boundaries are decided by them.

Mr Speaker, during his budget speech this year, the Chief Minister alluded to some kind of contact between various parties and the plots to which he has been going on about for the last three hours. At that time he also said that he once played little buttercup in Gilbert and Sullivan's HMS Pinafore and people may well wonder now, if he remains stuck in a pantomime to this day except that it is now called HMS Tireless. He sees plots and conspiracies and shadows everywhere even when there are none. People should, and I say that not just on this incident and from the wider things which have been mentioned in the media, be able to live in a Gibraltar where they are not afraid to speak on the telephone or meet or talk in case someone is listening or watching. The day that happens is when democracy dies.

The Chief Minister was very quick to display a chronology of the various press releases and the various events that took place, particularly the press releases in the media. If one analyses those and I was looking at them as he went through them, what we find is the abuse of the Chief Justice's statements was not done by myself or by my party or by the Opposition, it was done by the Government and I will give the House a number of examples. The whole issue chronologically started with the Chief Justice's claims during the Opening of the Legal Year and there he said, "The judiciary has encountered one or two instances in the past year where the denial or delay of the release of funds by the Government has had the potential to adversely affect the administration of justice. The matter is one of practical importance but there is also a fundamental principle involved. The Chief Justices of the Commonwealth were all agreed that those who control the judiciary's purse strings exercise enormous influence and have the capacity to undermine the judiciary's independence". Mr Speaker, if it is not the duty of an Opposition to comment on this statement then I do not know what the duty of an Opposition is. The response to that on the 15th October 1999, which the Chief Minister did refer to, was to call for a full and independent public enquiry. On that same day, also on the 15th October, the Government issued their own press release and in that they rejected the call for a public enquiry into this serious matter; they stated the Chief Justice wanted the extra funds to attend a conference in Malaysia and for social entertainment. "In the opinion of the Gibraltar Government" they said, "neither of these issues raise matters which adversely affect the administration of justice or the independence of the judicial process". So the ones who were giving the misleading impression was them and that was proved three days later when on the 18th October the Chief Justice issued a statement under

the seal of the Supreme Court where he made clear that those were not the two instances that he was referring to that had the potential to adversely affect the administration of justice. He would ponder the legal implications of releasing this information into the public domain. But the information was later released by the Government following the correspondence which the Chief Minister has already alluded to and in that correspondence one was the attendance at the Wolfe Reforms which, as he said, a Government which contains three lawyers and were not aware of the importance of the Wolfe Report is rather surprising but we take the Chief Minister by what he said, that they were not aware of it and how important it was. Secondly, the question of training Stipendiary Magistrates by sitting as temporary magistrates. Those were the two issues which the judge has pointed out, not the conference in Malaysia and the social entertainment as the Government have tried to imply originally.

So, Mr Speaker, I think going through the chronology of events there is a clear attempt not by anyone else but by the Chief Minister to distort what the Chief Justice was saying to the degree that the man had to come out and say, "No way, this is not what I mean. What I mean is this."

I said earlier that there would be few people in Gibraltar who could find anything objectionable in the wording of the motion in question. It must also be said that the definition of judicial independence which it gives is a very narrow definition. The motion defines the term judicial independence "as the ability of the judiciary to dispense justice without interference from any other source and with the benefit of sufficient resources to do so". This is rather restrictive. The standard textbook on Constitutional Law, says, "like other constitutional principles, judicial independence has many facets only some of which are expressed in definite legal rules." Some of these facets, Mr Speaker, are best put forward in an examination of how some international organisations have dealt with the definition themselves. The first one I wanted to look at was the Commonwealth Parliamentary Association publishing in 1998 what the Chief Minister has already mentioned and these are the Latimer House Guidelines. It is obvious that that is what they are and that is what they are called 'guidelines'. It is not something, at this stage, which anybody or at least which from the Opposition we were saying was anything more or anything less than that. These were published as a result of the conference attended by over 50 participants helping to formulate these rules. These represented 20 countries of the Commonwealth including three overseas territories. It was sponsored by the Commonwealth Lawyers Association, the Commonwealth Legal Education Association, the Commonwealth Magistrates and Judges Association and also the Commonwealth Parliamentary Association. The participants did include the Chairman of the Law Commission of the United Kingdom which the Chief Minister failed to mention and the Chief Justice of Gibraltar was also present. In the guidelines on parliament and the judiciary, Latimer House says that "while dialogue between the judiciary and Government may be desirable or appropriate, in no circumstances should such dialogue compromise judicial independence". There follow three general criteria for preserving judicial independence. These are – judicial autonomy; the question of funding; and the question of training. With regard to the first of these three, judicial autonomy, the guidelines mention the question of judicial appointment which is one issue which we have touched upon; the question of vacancies and also the question of security of tenure which we have not touched upon at all. That is particularly relevant in view of the coming into force in the United Kingdom of the Human Rights Act as the implementation of the European Convention of Human Rights. In a judgement handed down on the 11th November 1999, and which was published freely in The Times under the heading "Appointments system destroys judicial impartiality", a court in Scotland held that Article 6 of the European convention of Human Rights provides that a man charged with a crime is entitled to a hearing before an independent and impartial tribunal. The judge who had no security of tenure and whose appointment was subject to annual renewal was not independent within the meaning of Article 6. It was therefore unlawful for the Crown in Scotland to prosecute a man before such a judge by virtue of the incorporation of the convention into the Scotland Act of 1998. And it goes on, "Security of tenure to independence could reasonably be said to

be one of the cornerstones of judicial independence. Judicial independence could be threatened not only by interference but by a judge being influenced consciously or unconsciously by his hopes and fears about his possible treatment by the Executive. The inadequacy of judicial independence could not appropriately be tested on the assumption that the Executive would always behave with appropriate restraint as the European Convention of Human Rights had emphasised. It was important that there were guarantees out against outside pressures". Secondly, the Law Society in the United Kingdom has recently taken issue with the manner of appointments of judges in Britain which the Chief Minister has already alluded to. The position of the Law Society, this is quite recent, in October, is that now they are refusing to participate in appointments of judges in the United Kingdom, the present system in Britain is non-transparent and contrary to the Convention of Human Rights. The Lord Chancellor is a Member of Cabinet and he makes the appointment and what they are proposing is an independent commission to appoint judges themselves. Another issue has recently arisen in Britain also with regard to assistant recorders which in Britain in some cases form part of the Crown Prosecution Service and again because they fear a challenge under the new Human Rights legislation, many of these are stepping down and being replaced. Having mentioned the latest new developments in the United Kingdom I will go back to Latimer House and go on to the second issue which is the question of funding and there they say that it is more important than simply supplying sufficient resources as stated in the motion, "the administration of monies allocated to the judiciary should be under the control of the judiciary". Finally, the importance of training is also stressed. While accepting that these are only guidelines they do represent the preferred option of the Bar Council of Gibraltar and the preferred option of the judiciary and the Chief Justice of Gibraltar. So if the Chief Minister is not very happy with the Latimer House Guidelines then it is something he should say to the Bar Council and not to us.

Mr Speaker, that covers the area of the Commonwealth which in itself is obviously quite wide. Also the United Nations set out to define the independence of the judiciary and it does so not in one short motion of one sentence but in 20 substantial points some longer than others. The set of standards in the United Nations is known as the basic principles on the independence of the judiciary. These were adopted following the Seventh UN Congress in the Prevention of Crime and Treatment of Offenders held at Milan in August and September 1985 and it was subsequently endorsed by two resolutions of the General Assembly. The policy of the UN is to offer these principles as a model for law makers everywhere and it says that some have already incorporated them into their own constitutions or enacted them into law. Looking at the issue of independence of the judiciary it also divides it into four categories or groups relating to general points, to matters of freedom of expression for judges and freedom of association for judges; the question of conditions of service and tenure; and also discipline, removal and suspension. The first of these principles establishes precisely that independence of the judiciary "shall be guaranteed by the State and enshrined in the constitution or law of any country". This is something which certainly to my knowledge, from our own research, we do not think we have in Gibraltar and it is not explicitly mentioned or laid out in the Constitution. "It is a duty of all governmental and other institutions", says the UN, "to respect and observe the independence of the judiciary". This means that according to UN principles it would be an improper interference in the independence of the judiciary for anyone to seek to meddle in matters relating to the tenure of office of any judge and presumably this includes all other conditions of service. The basic principles declared in accordance with universal declaration of human rights, members of the judiciary are like other citizens, entitled to freedom of expression, belief, association and assembly provided, however, that in exercising such rights they do so in a manner as to preserve the dignity of their office and impartiality and independence of the judiciary. The reference to freedom of expression of judges is particularly relevant in the case of Gibraltar. What has never happened before here and what has never happened until the hon Mr Caruana came along is the witch-hunt of a judge because he felt he needed to express certain views, that is what has never happened.

As I said earlier, the UN principles were endorsed by the General Assembly. The definitions provided by the Commonwealth in the Latimer House Guidelines and by the UN, I think, show up the inadequacy, perhaps, of the definition provided in the one line motion before the House. In a concept paper on judicial independence, Britain, by itself an international jurist and published last year, the American Bar Association highlights several components of an independent judiciary as one that is free in the discharge of its duties and responsibilities from the influences of persons or institutions in the Executive and legislative branches of Government and from persons and organisations outside the Government who might wish to encourage the making of judicial decisions otherwise done by law. Within an independent judiciary orders, decisions and judgements are made by a judge on the basis of law and the application of recognised and established legal principles and rules and not on the basis of the status of one or more of the parties before the courts or by influences of some person within or without the Government or by the direction or influence of some Government or non-governmental agency or official. The concept paper goes on to stress how the principle of judicial independence should extend to judicial appointments; to the length of tenure of a judge; to judicial removals; to judicial discipline; to codes of conduct, administration and budgets. The paper sets out that although the independence of the judiciary may be set out in a constitutional separation of powers where the respective powers of the executive and the legislature and the judiciary are all separately defined, the independence of judges is not guaranteed simply by what is set out in the Constitution. Other important elements work in tandem with the provisions set forth in the Constitution to guarantee judicial independence. Among these elements is the need for a self-governing framework by which the judiciary can define and administer its own financial and administrative needs. This is a similar point to that made by the Latimer House Guidelines. Indeed it must be clear to the House by now that the fundamental principles of judicial independence set out by international organisations and by international experts is very similar. An international judicial conference which took place in Moscow last year discussed the question of judicial independence and the means of establishing it. It also pointed to the need for judges to create their own unions or associations. These could perform a wide variety of functions including proposing legislation or rules; training members; monitoring the judicial system; disciplining judges, and even filling judicial vacancies. Another important issue raised was the need for adequate staffing, adequate resources, the selection of judges and judicial discipline. The more that one delves into the question of judicial independence the more that its detailed complexities emerge. It is clear that the system that we have in Gibraltar while very broadly keeping within the text of the motion, does depend on the kind of definition of judicial independence that is used and the definition is important, Mr Speaker. Somebody famous once said that when words lose their meaning people lose their freedom. International evidence points to the fact that this is a wider concept and a wider definition. The President of the Law Commission of Canada said in October last year, that the question of judicial independence, its true meaning and its requirements is, above all, about impartiality that flows from institutional competence.

Mr Speaker, the hon Mr Caruana has done Gibraltar a disservice. The obsession with who meets who, who speaks to who, who rings who, is not a healthy one but it does not detract from the central issue at stake. In a democracy people are entitled to talk and to meet with whom they like. As usual, the Chief Minister has painted a picture of conspiracies, of plots, of fairy tales, of people meeting in street corners or huddled, whispers over drinks in cocktail parties. The plain fact is that the Chief Minister will go, despite everything he has said about me, down in history as having the dubious distinction of being the first Chief Minister of Gibraltar that any Chief Justice has seen fit to raise the public concern about and this is no laughing matter. I regret once again that instead of having a reasoned approach to this subject, the Chief Minister has chosen once again to personalise the issue and take the level of politics in Gibraltar to the gutter. Thank you.

HON ATTORNEY-GENERAL:

Mr Speaker, as you will be aware, it is fairly rarely that I speak in this House but I think, as Attorney-General, it is right that I should make a contribution given the subject matter of this motion.

Three reasons why I think that is right. First, one of my roles is as Titular Head of the Bar; secondly, my Director of Public Prosecution role, I have control of all proceedings before the criminal courts in Gibraltar, and third, I think I am the only Member of the House who currently regularly appears in front of the judiciary. Right to say this, that I intend to support this motion but I would like to make it clear why. Judicial independence is an essential pillar of any democracy and I think that perhaps even more in a small jurisdiction than in a large one because in a small jurisdiction there are sometimes less checks and balances.

I can say this, that in the time in which I have been in Gibraltar I have never seen any signs of a judiciary lacking in independence nor have I seen any signs of any interference with judiciary. In the time that I have been here now spans not only the present Government but also the last year of the Opposition in power.
The Latimer House Guidelines have been mentioned quite a lot in this House and I think it is right that I should say something about them. As the Chief Minister has said, these were guidelines put forward in Latimer, in Buckinghamshire by a Commonwealth sponsored group mainly of judges and of other Commonwealth lawyers. They went forward as draft proposals to, first of all, the meeting of Senior Officials of the Commonwealth. They then went onward to the meeting of Commonwealth Law Ministers in Trinidad and Tobago and the proposal was that they would go forward from there to Heads of Government. I was at the meeting in Trinidad and Tobago so I think I am fairly well placed to say what happened. I was there as a representative of Gibraltar and with other Overseas Territories made up the joint UK delegation. The proposals never got further than Trinidad and Tobago and they came to grief on two issues: one was the issue of control of funding and the second, was the issue of a Judicial Appointments Commission. It is right to say this that by far the more emotive issue was the issue of control of funding. A lobby was formed at that meeting and in broad terms it was Australia, New Zealand and Canada who were very adamant that as far as their Governments were concerned, they were not prepared to sacrifice sole control of voted funds to the judiciary and I stress the words "sole control". There was an animated debate, the lobby stood firm, the United Kingdom took a neutral position on this, *[Laughter]* and at the end of the day the result was a diplomatic compromise, the proposals referred back to senior officials. Well effectively that means being sent to Siberia. It is the kiss of death because what happens, they go back and in four years time they may resurface. But that I fear is what happened.

The only point I would make is this, but I do not think it is suggested that the independence of the judiciary in Australia or New Zealand or Canada is in doubt despite the fact that they were the people who took very seriously this issue of sole control of funding.

I support the motion because in the same way I do not see the independence of the judiciary in Gibraltar as in doubt. I would like to make it clear it is on those grounds that I support this motion.

HON J J BOSSANO:

Mr Speaker, I do not intend to speak for three hours or to compete with the Chief Minister for his theatrical performances. I have never been 'buttercup'.

I will go through the points that he has made which I think require an answer and, of course, let me say that little of the contribution was necessary in terms of persuading this House to vote for the motion that there is on the Order Paper. Clearly the Government felt a need to say the things he has said although I am surprised that they should have felt the need to go on at such length since it is not true that it is all new. Many of the arguments that we have heard here today we have heard before, I have read them in Government press releases. The questions about funding were dealt with at the time that the matter was raised in October 1999

so it is not that we are not until now aware of the nuances of the differences about whether the funding was being done in the right way or not being done in the right way. So when the Government say in the House that funding and building and staffing have always been in the case of the judiciary, no different from any other Government department, well I do not think anybody has ever been contesting that assertion although there is nothing sacrosanct about it one way or the other. If the Government felt that there was something terribly wrong about each item of expenditure not being controlled by the House, then they apparently are quite relaxed about the fact that £28 million of expenditure in the Health Authority is not controlled item by item. So the two systems exist in parallel in the Estimates of Expenditure to which he drew the attention of the House when he made his contribution. We have not got any strong views one way or the other. We are not saying, "How terrible it would be to lose control of the budget of the judiciary or a part of the budget of the judiciary". In fact, we think that the system that exists already gives quite wide flexibility for departmental votes to be altered during the course of the year if a need arises. So it is not as if we have got a straightjacket that if one puts money for one thing and then something breaks down in the office one has to come back to the House and get another Supplementary Appropriation Bill. The reality of it is that throughout the year there are excesses and shortfalls in what are estimates of expenditure and that within the Head of Expenditure the department is given the authority to use what is not required for one particular item for another item. So I do not think that the budgets that are presented by the estimates in the House and approved by the House are, in practice, or have ever been or intended to have been a religious demarcation of every penny that is voted so that no department may spend any money on anything else other than what the House said. That is not the case, that has never been the case. On top of that the Government ..... *[HON CHIEF MINISTER: Subject to virements.]* Subject to virement, obviously, within the Head and therefore normally a department would not find political differences in that area because the virement is done mainly by the officials in the Treasury approving the money being moved from one subhead to another. In that context the fact is that the issue has been focused, if I may say so, slightly wrongly because it is not a question of "do we hold control of the purse strings in this House tightly or do we give it away?" Well, we have got already a system where the control of this purse is sufficiently lax for, I would have thought, the sums of money available, £9,000 to be easily capable of being accommodated within the existing virement provisions on top of which, of course, there is a block vote of supplementary funding which we put as the final item in the Appropriation Ordinance where again it is possible to supplement the funding that is voted.

There is, in my judgement, no need for a change in the system that we have got in order to give the flexibility to the department in terms of the courts to have access to funds which they did not anticipate they would need at the beginning of the year anymore than for any other department. I do not see anything in what is happening now, in that respect, that suggests that they are being constrained from having access to funds because we get Supplementary Appropriation and virement notices throughout the year which shows that there is movement of funds away from the original presentation of the estimates. So really if the problem is that the political case was what prevented, as opposed to the lack of funds, then that is a different issue. Should, in fact, Heads of Department, and not just the judiciary, be freer to control the composition of their budget? Well, in some places they do to a greater degree than we do here. I can tell the House that I have seen estimates of other dependent territories where in fact the amounts that are voted by the House of Assembly are bigger chunks of expenditure than we vote here and we go down into more detail. By and large, I think, it is better to retain the system of more detail because it does not stop the money being used for something else and at least it gives the public, and not just the House, a clear idea of where their money is going, so there is nothing wrong with the detail. If there was to be a debate on whether the practical operation of the system is perceived by those who are in the system, in the judiciary as potentially reducing their capacity to deliver the quality of the service in terms of its provision of effective justice to those who have recourse to the courts, then clearly I think if they feel whether they are right or

they are wrong that that is potentially a danger because of insufficient funding for training or because of the method of recruiting trainees, I think that there is nothing wrong in that being put in the public domain and a debate ensuing and these matters being thrashed in the open although I must say I would tend to sympathise with the Government if the first time they hear of it is when it is put in the public domain and there has not been an internal debate first and an attempt to reconcile positions first which is what I would have expected to have normally happened. Clearly I am not in a position to judge, I am not privy to what has gone on but I would have to say that in Government one does not expect that some department uses the media to put pressure on a particular thing on which they may be lobbying unless they have really exhausted every other avenue put to them but that they should, at the end of the day, may be uncomfortable for those who are in office but I think it has to be part of the price that we pay for being in a democracy. If people write to the Chronicle and support the Chief Justice well they are entitled to do it. That may mean that depending on one's character or personality one may take it with more like water on a duck's back and some other individual with a more volatile character might feel that he has to say that it is outrageous and that they are all cronies. I put it all down to our genetic make-up these days, the more I hear about the human genetic project the more I am convinced that we are in a factory which produces us at birth with a personality with which we finish up at the other end. So I really think there is no hope for the Chief Minister however much I preach intolerance to him from the Opposition. *[INTERRUPTION]* Well, I can tell him now that I do not know what stories went round when I was in Government and they went with stories to him but if they are half as awful as the ones they come to me about him, they must be bad. Of course I never heard the other ones before just like he is not hearing the ones I now hear.

I think some of the things that the Chief Minister has said in seeking support for this motion are an exaggeration perhaps to make the point that they are the offended party instead of the offending party and that therefore they have been at the receiving end and that this is really their way of putting the record straight and exonerating themselves. He chooses to explain things in a particularly exaggerated fashion, that is his style of explaining but, of course, as my hon Colleague mentioned, when we come to the Latimer proposals, first of all, we have the Latimer proposals rubbished in his speech and then he rubbishes those who defend them. The people who met in this conference were Kiribati, who has ever heard of Kiribati? Is that supposed to indicate to us his ignorance of geography or the unimportance of Kiribati? I can tell him where Kiribati is if he wants. Of course he says no large democratic jurisdiction was present. Nigeria only happens to be the largest parliamentary democracy in the whole of Africa, I do not know whether that counts or because they are in Africa we do not discount or that does not make them large or makes them democratic. Certainly compared to us they were all large. Cyprus is 750,000; Botswana is several millions; we were the smallest jurisdiction there but the issue is not how large or how important or unimportant they were but what is the value of these Latimer House proposals. Having told us that we should not pay much attention to the people who supported it because either they were from Kiribati or as small as Nigeria, we then get told but that in any case he is not against the Latimer proposals, he is quite content with the Latimer proposals. I have difficulty in understanding, if the Government are not against them why does he put so much energy and effort into downgrading them and removing their importance in the context of this House. It is not as if the motion was saying that in order to maintain the rule of law and democracy we need to have the Latimer House proposals or not have them. The motion is silent. However, the position that was adopted by the Bar Council on the 24th November when they said, "As far as the Bar Council is concerned, it reiterated yesterday that it is against any consultation for judicial appointments and that the Bar Council will not accept any process other than in strict adherence with the Latimer House proposals". Well, with all his friends in the Bar Council surely he ought to have told them that only people in Kiribati believed in the Latimer House proposals before they got themselves all worked up about it. We in the Opposition have not made up our mind whether the Latimer House proposals were all that important or not all that important but now that the hon and Learned Attorney-General has

assured us that they have had the kiss of death, I do not think we need to bother anymore about the merits because it is obvious that it might have been a good idea but it is a good idea that is not going to get anywhere. Obviously we are in the Constitutional Committee with the Government and there are proposals there on the judiciary and I think that that is the right place in which we debate the future and, of course, anybody in Gibraltar is welcome to put proposals to the Committee on that particular subject. The Committee has come out inviting it. Where we are looking at a situation that we have at present, although the Government say in the motion that it is fully safeguarded by law, I am not sure what is the law in question. We looked at the Constitution and we could not actually see that this question of the safeguard of the independence of the judiciary is as clear even in the Constitution as is being made out to be. I would have welcomed if the Chief Minister had told us what was the law he was thinking about when he said in his motion that it is safeguarded in Gibraltar by law. Certainly by long established practice we accept but the law in itself has not been identified.

The point about the selection, well, Mr Speaker, when the present Chief Justice was appointed he came to see me as the others. Certainly he did not come to see me as an applicant being interviewed by his prospective boss, he came to see me because it was a practice that I did not ask for but it was thought presumably desirable that there should be personal contact between those who might become the Chief Justice of Gibraltar and the person who was the Chief Minister of Gibraltar. And I can tell the House, as I have already said publicly, that we said one of the areas that is of concern to us is the question of the penalties that are imposed for offences related to drug trafficking because we have found, with our experience in the House of Assembly, that we keep on pushing the penalty up and then when the person gets taken to court and gets convicted the judges impose a very small penalty and they do not seem to be taking any notice of what is presumably implicitly the expressed desire of the elected legislature which ought to be reflected in sentencing policy. I said to Mr Schofield, we have not done anything about it because our advice is that it is unconstitutional to try and require a penalty to be imposed, we can only set a maximum. So what we would look to an applicant would be that he should be in tune, he is free to do it because we do not want to interfere with the judiciary but he should be in tune with what is the sentiment of parliament in putting penalties, that he should take that into account. We said that to every single candidate and we did not say to any of them, "And if you are not you will not be selected" because we did not know who was going to be selected. The only input that we had was through the Administrative Secretary who sits on the selection board and when we looked at the candidates we said, "On the elected Government side there is only one person that we know. He has been in the Attorney-General's Chambers in Gibraltar many years ago, he proved to be somebody that was committed to Gibraltar's interests and therefore based on the fact that all the rest are strangers, we would rather have somebody that we know than somebody that we do not know". But at the end of the day the decision was that he was not selected and therefore the Governor informed me of what the decision was. He did not call me in and said, "Look, I am going to consult you now so that I can take a decision". He said to me, "This is the recommendation that I have had and this is what is going to happen and I am telling you so that you will learn it from me and not from other sources" It seems to me that what is provided in Bermuda is more than that because there is not just a requirement to consult with the Leader of the Opposition and the Chief Minister in Bermuda, the Prime Minister or the Premier or whatever they call him, but that consultation there must mean more than information and therefore when the Chief Minister was drawing this distinction between information and approval and consultation, well I think that when it came to the last appointment of the Chief Justice what I had was information of the decision that had been taken as far as the exchanges between the Governor and myself. But I believe there ought to be consultation before the decision is taken but I do not think that that happens and I think that the input of the Government of Gibraltar is already secured at the moment through the fact that there is the Senior Civil Servant on the Gibraltar Government side in the board that knows the Government's thinking just like the others know the thinking of the Foreign Office before they get here. I have no

doubt, although I have no proof that a decision is already in the pipeline on the basis of the selection process even when the thing is put out. The system of the judiciary here and the system in many of the other civil service positions that we used to have which were filled by people from outside, were filled by people who went round colonies. In fact, they quite often knew each other from their previous colonial postings and I think that is the system that is a remnant of the past. The Governor's appointment of the Chief Justice technically is the same as an appointment by the Crown but that is true of every civil service appointment. Mr Speaker, I do not think and in fact the mover himself has said that although he has accused basically, in so many words, the Chief Justice of being a neo-colonialist whose concern is that the system will not do for us because we are a colony, it is quite all right for the independent nation states to have politicians in America or in the United States or whatever selecting the judges but it is not all right for a colony. Well, I do not think he has produced any evidence to this House that that analysis of his is correct because he has also said in the same breath that he recognises that there are problems with small places that do not exist with big places. If he could say, "The Chief Justice has said that it would not be okay if Australia was still a colony but it is okay because Australia is independent and it is okay in Liechtenstein because it is independent but not okay in another place which is not independent". Well, I do not think that the influence or the concern about the influence or the concern that there should be an independent judiciary and should be seen to be independent is a function of our colonial status. The function of our colonial status is throughout our society just like there are arguments that can be put ideologically and philosophically that the class structure which some of us are not convinced has disappeared, although some who used to think it was there now believe it has disappeared, believe that the class structure is also reflected in the values of the judiciary and that it will take many generations for that not to be the case but it is not something that one can rule out constitutionally or legally over-easily. But when we are looking at the question of the independence in terms of people feeling that they have got nothing to fear from the system, well the fact that Tony Blair selects who goes to the House of Lords as a Court of Appeal, he advises the Queen on who to select, what is it that he does then? I will give way.

HON CHIEF MINISTER:

This is not a question of who goes to the House of Lords as an ordinary peer. He advises the Queen on who are appointed Lords of Appeal in ordinary so-called Law Lords not to be confused with ordinary peers of the realm which he also advises the Queen on.

HON J J BOSSANO:

I think the fact that the Prime Minister advises the Queen on who should be the Law Lords, I do not think would cause the same kind of concern if he also selected who was going to be every single person in the judicial system down to the magistrate in every town of 30,000 people. That is the parallel. We are not here saying who should select the court of Appeal for Gibraltar and it is one thing for the Chief Justice appointment to move perhaps to the Bermuda situation but the Bermuda situation, from the quotations the Government have put in the public domain of their Constitution and I am sure that if there was anything else there they would have put it, refers just to the Chief Justice not to everybody else. So it is true that in some of the exchanges of the correspondence the Government denied that there was any question of them wanting to select who obtained or did not obtain the opportunity of training and today, in fact, they have said, I think that possibly is the first time that that has been said, today they have said the very opposite, that their position was that everybody should be entitled to apply and be given an equal opportunity to be participating in..... *[HON CHIEF MINISTER: I said it publicly then.]* He said it publicly then, I am grateful for that clarification but I had not picked it up before, I thought it was being said for the first time today. And I would have to say that I would agree that that is a better approach and a fairer system. If at the end of the day the training that is going to be obtained is going to put people in a better position to become selected at a later stage then everybody that wants to do the training ought to have the chance of doing the training otherwise obviously they

are going to be able to argue at the end of the day that they have been handicapped in the competition for the vacancy, I thought it was self-evident. I would not have had any argument in supporting that and I am glad that, in fact, that bit has finished like that and that that difference was eliminated. The approach of the Opposition on this motion is really that on looking on the surface of the motion and rather than on what has been said and I am certainly not going to indulge in any comments on what is extraneous to this debate under the rule of justice but certainly I would think it would be wrong if in our system the way people are required to meet their obligation is dependent on whether they are critical or not critical of the system, that would be wrong and that is important in terms of the independence of the system not just in judicial decisions but in people feeling that they have different roles in life and they are unconnected and what happens in one role should not then colour everything else that they have to face in every department as if we were in a situation where one is being watched by the much maligned KGB or the CIA. Given that, we are going to be voting in favour of the motion but we are going to propose an amendment which I intend to move now and that is to replace the full stop at the end of the motion with a comma and add the following words:

"and is fully committed to ensuring that the independence of the judiciary is maintained and protected in the future in accordance with the Basic Principles of the Independence of the Judiciary endorsed by the General Assembly of the United Nations".

Unlike the Latimer House proposals this has not received the kiss of death so it is alive and kicking. I have got the text here which I will tell the House about. Really we are talking about principles which were adopted by the United Nations in 1985 in Resolutions 40/32 and 40/146. It follows similar intellectual concepts to the ones that we have seen in a different form reflected in the Latimer House proposals and to the ones that will be discussed in the need to ensure that the administration of justice is independent. But, of course, this is from 1985 and the resolution of the United Nations called on Member States to adhere to the principles and to incorporate it in their national laws and constitution where applicable. We of course believe in this House in upholding the principles by which the United Nations are governed because we are very conscious of the need to persuade them that they should apply all those principles to us in our right for self determination. So what better than we should forget about poor old Latimer and concentrate on the UN which is closer to our hearts. It deals with the independence of the judiciary and it says, "the independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country". We are being told that it is already guaranteed by the law. So the first principle is that it should be and if it is then that is fine but if it is not there ought to be a commitment to doing it so that either in the new Constitution that we are working on or in the laws of Gibraltar there is such a provision. But this is the first principle in the list of the basic principles which have been adopted by the resolutions of the United Nations in the General Assembly. "It is the duty of all governments and other institutions to respect and observe the independence of the judiciary". "(2) The judiciary shall decide matters before them impartially on the basis of the facts and in accordance with the law without any restrictions, improper influences, inducements, pressures, threats or interference direct or indirect from any quarter or for any reason". I am sure that that meets fully what the Chief Minister said when he was moving the motion which is that they should not just be protected from possible political interference or interference from the Government but from any quarter. Well, that is the second principle of the United Nations basic principle list. "(3) The judiciary shall have jurisdiction over all issues of a judicial nature and shall have the exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law. (4) There shall not be any inappropriate or unwarranted interference with the judicial process nor shall judicial decisions by the courts be subjected to revision. The principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary in accordance with the

law. (5) Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal processes shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals". I believe some of these things reflect what we already have in the existing Constitution in terms of people's rights to a fair trial. "The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected. (7) It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions." That is quite an interesting one because since we are not a Member State maybe we could get the United Kingdom to pay for the judiciary. "Freedom of expression and association. In accordance with the universal declaration of human rights, members of the judiciary are, like other citizens, entitled to freedom of expression, belief, association and assembly provided however that in exercising such rights, judges always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary". So I think the principles here seek a balance in that they say, well like any other citizen in the community the judge is still entitled to express his views but he has to exercise self-restrain, if one likes, in the manner in which he does it but it does not mean he does not have the right. "Judges shall be free to form and join associations of judges or other organisations to represent their interest and to promote their professional training and to protect their judicial independence." (10) deals with qualifications, selection and training – "Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status except that their requirement that a candidate for judicial office must be a national of the country concerned shall not be considered discriminatory. (11) Conditions of service and tenure. The terms of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law. (12) Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of the term of office where such exists. (13) Promotion of judges wherever such a system exists shall be based on objective factors, in particular, ability, integrity and experience. (14) The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration, professional secrecy and immunity. (15) The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings and shall not be compelled to testify on such matters. (16) Without prejudice to any disciplinary procedure or any right of appeal or to the compensation from the State, in accordance with national law, judges shall enjoy personal immunity from civil suits, for monitory damages, for improper acts or omissions in the exercise of their judicial functions. (17) A charge or complaint made against a judge in his or her judicial capacity shall be processed expeditiously and fairly in appropriate procedures. The judge shall have the right to a fair hearing and the examination of the matter at its initial stage shall be kept confidential unless otherwise requested by the judge. (18) Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties. (19) All disciplinary suspension or removal proceedings shall be determined in accordance with the established standards of judicial conduct. (20) Decisions in disciplinary, suspension or removal proceedings shall be the subject to an independent review. This principle may not apply to decisions of the highest court and those of the legislature in impeachment or similar proceedings". These, Mr Speaker, are the standards that the United Nations expects of its Member States and I think that they are already, in many of the areas, covered by either the practice or the Constitution or

the reference to the list of rights that we grant to citizens in Gibraltar. The motion just says about what happens until now; the amendment says what should happen in the future from now on and I can think of no better way than demonstrating our commitment to an independent judiciary than to use the guideline and the standard that the General Assembly of the United Nations recommended to the civilised world in 1985. I therefore commend the amendment to the House.

HON CHIEF MINISTER:

Mr Speaker, speaking to the amendment at this stage, somehow I do not think that the United Nations is recommending that in 1985 to the civilised world, possibly to others. I am quite happy to try and agree with the hon Member words that do not just talk about the past but I am not willing to support those words. The Government would need to study each of those statements of principle carefully to see what their implications were and indeed what their application is in a modern western society and certainly we will not agree to a motion amendment which flags or is capable of being misinterpreted to flag a non-existent problem here. Gibraltar is not a third world banana republic in the administration of justice or anything else and I am not going to support the adoption of resolutions in this House which may give others the opportunity to think that we are. However, if the hon Member wants some language which commits us all to upholding the integrity and independence of the judiciary as we have done in the past, then I have no difficulty with that and I would propose to the hon Member instead of his words the words, "and is fully committed to ensuring that the independence of the judiciary is maintained and protected for all time in accordance with" – not that list of outdated principles. He has condemned Latimer to the dustbin, I have not.....*[INTERRUPTION]* Well, I think the Leader of the Opposition perhaps has seized on the Learned Attorney-General's words too literally. I think Siberia is a place that it is possible to come back from but it takes longer and I think that is what the Learned Attorney-General says, that if this is the equivalent of being sent to Siberia. I would say, "is fully committed to ensuring that the independence of the judiciary is maintained and protected for all time in accordance with recognised and established best practices in western democratic societies". I am prepared to align Gibraltar to any standard that is adopted as conventional, best practice, as accepted established best practices by the world's leading democratic societies. *[HON J J BOSSANO: I imagine it is this list.]* Well, if it were, then there might not have been any need for these judges to get together in Latimer. There is obviously a difference between Latimer and that, because if there were not, Latimer would not be necessary and therefore I think we should accept, rather than commit ourselves to a rigid document, I think Gibraltar is a Member of the family of modern western democratic societies and it is better to commit ourselves to accepting change as and when it occurs in those modern western European societies. We are not going to be at the forefront of evolution nor are we going to be at the tail end of accepting that evolution. When these things change when the conventional wisdom of what is best for ensuring the independence of the judiciary changes in western democratic societies, Gibraltar must demonstrate that it is ready and willing to follow. What I object to is to being suggested that we should be the first to implement the Latimer House proposals whilst Canada, Australia and New Zealand send it to Siberia, that is the difference. Therefore, Mr Speaker, I would suggest an amendment to the Leader of the Opposition's amendment which is to delete all the words after the word "protected" and replace them with the words "for all time in accordance with recognised and established best practices in western democratic societies". That is even wider than his rather limited 1985 doctrine.

Question proposed.

HON J J BOSSANO:

Mr Speaker, we will support the proposed amendment of the Government for the simple reason that we would rather that the

motion on the independence of the judiciary should be carried in this House by unanimity and not by Government majority but I really must say that I do not know why the Chief Minister finds it so difficult to argue a case for anything without having to either rubbish it or find ways of describing it. Nobody is suggesting that Gibraltar is a banana republic because we should subscribe to this, this is not something that is out of date because it was passed in 1985. If it were out of date then where would we be with the resolution of 1954 on self-determination which we are still seeking to exercise? The fact is, as he knows or he ought to know, that when the United Nations General Assembly passes resolutions it then takes many, many years for all the Member States to incorporate it and adopt it and make it because this is not a mandatory thing. This is something where the Assembly calls on its members to be guided by this set of principles. This is why I am saying that to the extent that it is already implemented anywhere it is likely to be implemented in modern western societies so since the Government are prepared to commit themselves to pursuing the maintenance of judicial independence in accordance with the practice then I would say that practice is likely to be in accordance with these basic principles because these basic principles may take some time to be implemented in far away small countries but we would expect it to be implemented in the United States and in Australia and in other places well before that and also in western Europe. So as far as we are concerned, having done the research into the question of judicial independence because of the motion being brought to the House, we came across a document which seemed to us to be the best guidelines, what the international community recommends to the world and that we thought it would be good for Gibraltar's image and reputation which worries him so much that we should be able to say, "We stand by the United Nations standards of basic principles of independence". Then he can write to The Sunday Express and prove them wrong because here we are, we stand by best practices. But rather than have a position where we divide the House on this, we will accept his proposed amendment to my amendment but we intend to pursue this matter on the basis of seeing to what extent in fact the principles that are enshrined in this are the ones that exist elsewhere and see them translated into our own laws.

HON CHIEF MINISTER:

Mr Speaker, I realise the hon Member would just not want me to reply so that his pearls of wisdom remain the last on record but the fact of the matter is that he cannot sensibly expect a Government on the basis of a cursory five minute reading of 30 alleged United Nations or whatever number, even if it was only two, alleged United Nations principles that we have not had the opportunity to study, that we have not had the opportunity to see to what extent they have been overtaken by subsequent pronouncements, that this is a General Assembly resolution which necessarily is not binding as a General Assembly resolution; we do not know the current status of that resolution; we do not know who voted for and who voted against and where the civilised world stands on that resolution. The hon Member assumes that the United Kingdom supported it, for example. But from the very quick hearing of the 20 principles there were two or three which to my knowledge the United Kingdom nor he has systematically subscribed to. He knows that in practically all the overseas territories including Gibraltar, judges are on contract, he knows that. I do not know if the United Kingdom and other modern western societies subscribe or do not subscribe to these principles but if the United Kingdom does subscribe to these principles it has not done very much to apply them in its overseas territories. *[INTERRUPTION]* It proves the difficulty of expecting the Government to support an amendment on the basis of a quick hearing of his reading of 20 principles. If the hon Member had wanted us to consider an amendment based on 20 principles and he was genuinely interested in trying to secure the Government's support for it, he has had notice of this motion for over a month. One would have thought that he would have sent the 20 principles to the Government so that we could consider them and therefore be in a position to support or not support. If the hon Member thinks he is going to stand up and expect us to support an amendment incorporating 20 principles on the basis of a quick hearing of them he has got to understand that it would simply not

be safe or prudent for a Government to act on that basis. But now that he has reread to me this business about semi-retirement age or contract, of course that would be a breach of Latimer. This business of the contract because, for example, the view has been taken by many actually not just by our own Chief Justice, but the view is taken by many that it is wrong for judges to be on contract because if a judge is on a contract then he is in the hands of those who gave him the contract as to whether they renew it or not and if that is the case there is an argument that one has got to, some contract judges – I have never seen any evidence of it in Gibraltar but some contract judges..... *[INTERRUPTION]* No, the first thing that one gets taught as an advocate as opposed to theatre is that one must always understand the other people's point of view otherwise one cannot do the debate justice. The hon Member wants to present a motion dealing with the question of contracts he will hear me when I respond to the principal motion what judges think about contracts and about the very existence of contracts so there is one principle there. If that is what that principle says that is already a principle that has been overtaken by modern developments. It is not a question of rubbishing them, it is a question of not being able to assimilate that the 20 principles are our feet and support them and find ourselves committed as a Government to 20 principles which has taken him over 10 minutes to read and that the Government should adopt them as policy for the future on the basis of one cursory hearing of them. I have to tell him that if he were serious in the intent of seeking Government support for them he would have provided them to the Government ahead. The formula that I have suggested to him, if he is right that those principles are already reflected in best modern democratic society practice then the formula that I have suggested to him incorporates them and therefore it seems to me that if he is right he has his way and if he is wrong the Government are protected from having adopted language which locks us in to a set of specific principles which may no longer be the flavour of the decade given that it is several decades ago. Therefore it seems that rather than support our language for the expediency of not dividing the House he should rather support our language because it is more sensible because if he is right that our language incorporates his principles and if he is wrong and we have not had the opportunity to consider whether he is right or wrong but if he is wrong then Gibraltar is not saddled with the principles which no longer apply and I think that is the basis upon which I would recommend to him support for the Government's amendment to his proposed amendment.

Question put on the amendment to the amendment. Passed unanimously.

HON J J BOSSANO:

Mr Speaker, I am sorry that in the background to his motion which has been as long with the Government as it has been with us if not longer, they never thought to look at other standards beyond Latimer, that is not our fault. If we were able to find this information and take it into account as being pertinent to the motion I would have thought they could have done the same thing. But be that as it may, we are supporting the motion, as amended, and we shall be pursuing these proposals on the basis of coming back in future Houses to the Government to see how close we are moving in that direction.
Question put on the amendment.

Question proposed on the motion, as amended.

HON CHIEF MINISTER:

Mr Speaker, I marvel at the speed with which the hon Dr Garcia is able to write out his speeches because, of course, one does not wish to be too Machiavellian but if one were, which one of course is not, one could come to the conclusion that so justified as opposed to unjustified which is what he has said, so justified are the Government's comments in this debate that he had assumed that the Government would make them and had written out a long speech before he had even heard my address in this House and I ask the hon Member how he could possibly have written out a, yes it has been obvious to everybody in this House that the hon Member was reading his speech. *[HON DR J J GARCIA: The Chief Minister is very predictable.]* Fine, well if I am very

predictable it is because what I am going to say is predictable and if what I say is predictable it is because it is natural in the events which have happened and if he without even hearing me was able to prognosticate what the Government were going to say it can only be because he knew that that is what the Government needed to say and would say and had scribbled out, like a sixth former, his contribution in this debate verbatim. I do not know how the hon Member can stand up and say, "I do not agree with this, I do not agree with that....." when he has already got it all written down before I have even opened my mouth. This is mind boggling.

HON DR J J GARCIA:

If the Chief Minister will allow, he said all this before that is why, it does not take much to realise what he is going to say when he has said it all before.

HON CHIEF MINISTER:

My advice to the hon Member is that he does not make his position worse. I have not said before half of the things that I have said here today I have not said before nor let me tell the hon Member, nor do I accept that he is the author of the speech that he has read out. Yes, I am asserting to the hon Member that I do not accept that he is even the author of the speech that he has read out.

HON DR J J GARCIA:

Mr Speaker, then the Chief Minister is completely mistaken.

HON CHIEF MINISTER:

Well, I may be completely mistaken but there are views contained in that speech which come from other quarters. If one puts two and two together one gets four if one knows how to count or four and a half or five if one does not but he comes to this House with a prepared text containing arguments that I have heard in other quarters and which I have never heard from him because all he has ever said in public is vitriol distortion of what others who have said those views before have themselves been saying. The hon Member can stand up in the hope.....

HON DR J J GARCIA:

Mr Speaker, if the hon Member will allow. I have all the research in front of me, all these documents.

HON CHIEF MINISTER:

The hon Member has to wait until I give way. The fact of the matter remains that he comes to this House with a prepared speech, criticising me for my speech before he even knows what my speech was going to be. Those are the inescapable facts and I say this in case what he was trying to do was give the impression to those who are hearing this debate but are not here present the impression that somehow this was a spontaneous and considered response. It is not spontaneous, it is.....

HON DR J J GARCIA:

On a point of order.

MR SPEAKER:

What is the point of order?

HON DR J J GARCIA:

The point of order, Mr Speaker, is that every Member who speaks in this House is responsible for what he says and I think that should be accepted.

MR SPEAKER:

All right but that is not a point of order.

HON CHIEF MINISTER:

The fact that he is responsible for it does not mean that he is the author of it. Mr Speaker, therefore the only point that I am making to him is that in having himself foreseen as he must have done in order to prepare his speech, in order for him to have foreseen what I was going to say, what I was going to say must have been foreseeable and if it was foreseeable it cannot be quite as outlandish as his prepared text provides. He says that the independence of the judiciary should be dealt with with more tact and diplomacy. He is the only person in Gibraltar who frankly is disqualified from making that point unless – I am not going to waste the House's time – he considers that his own remarks to which I have made full reference is tact and diplomatic. What I do not do in the name of tact and diplomacy is to ignore the facts of a debate and simply abuse it as he has shamelessly done in the past and has continued to do it here today for his own narrow-minded politically opportunistic tendencies. That is what I do not do. Tact and diplomacy is not to wait seven months before answering some of the things that we have waited seven months to answer so as not to interfere, so as not to colour, so as not to complicate another important issue affecting the judiciary which had to be dealt with tactfully and diplomatically but, of course, the Opposition have not expressed a view on that. The Opposition have never expressed a view on that. I think the Government have been very patient, not very impatient as the hon Member suggests and I think that we have been very tactful and very diplomatic none of which prevents us but we now know that it would prevent him, from saying what we think needs to be said in protection of the public interest and in protection of Gibraltar. The hon Member thinks that standing up in this House and saying the things that we have said is an attempt to intimidate the Chief Justice and to get one over him. I am as free to say what I like in this House as the Chief Justice has felt free to say in his courtroom. He is not here to answer me on this occasion just as I was not there to answer him on the occasion in which he expressed his views. Nothing that I have said, I am certain, will intimidate the Chief Justice; it is simply exercising Government's legitimate right to defend ourselves in a place where we expose ourselves to challenge by the Opposition. This is the place where it is right for matters such as this, affecting the public interest to be debated and not through silly little press releases of the sort that the hon Member issued in the hope that he would gain some political advantage from the complexity of dealing with these issues in a press release battle. He says that the role of the Chief Minister is not to launch poisonous attacks but to defend his track record. Well that is exactly what I have attempted to do, to defend mine and the Government's track record. It is not for him to defend his track record, he has the privilege of being able to utter the endless string of nonsense that he likes and never be held to account for it because he has no responsibility that goes with his freedom to utter what he pleases. The Government are not in such a comfortable position. The Government, as Government, have responsibilities to defend our track record and that is what we have done here, in the place which we consider to be the appropriate place. He says that we are upset by the Chief Justice's claims. We certainly are, of course we are upset by the Chief Justice's claims, we are upset by the Chief Justice's claims not because he made them if they were true but because he made them in public first. That is why we are upset and we are upset because he chose unnecessarily ambiguous language which gave people the scope for misunderstanding the implications of what he is saying and gave the hon Member the opportunity which he waited not five minutes to seize to try and make political capital on the basis of the distortion and twisting of the Chief Justice's words. That is why we are upset. We are upset much more by his distortion of the whole debate than we are by anything that the Chief Justice said. He continues to shake his head. I will explain to him what happened in fact and he must now search his conscience to see whether all these things that I read to him from his press releases are actually justified on the facts of the matter even if they were all true. Even if it were right that the Government were wrong in saying, "No, you have got to advertise the trainee magistrates" and even if the Government were wrong in not giving the Chief Justice money to go to Warwick University for three days. Does the hon Member think it warrants the remarks that he has uttered in public and which I have reminded him of this evening? The hon Member has not got a clue of the

seriousness of the affairs in which he has chosen to involve himself. He has not got a clue of the damage that his utterances are capable of inflicting not just on Gibraltar but on the reputation of its Government. My extreme consolation is that the people of Gibraltar are wiser than he is and knew when they had to ignore rubbish as rubbish. What, he asked would the Chief Minister – me – have said or done if some other Chief Justice had said this of some other Chief Minister? I will tell him, exactly what I said when the previous Chief Minister made similar remarks about his new political master, the present Leader of the Opposition, nothing. Yes, the hon Member may dedicate time researching 20 United Nations principles but he does not do enough local research on matters of real importance because I do not know whether in 1995 he was tuned in or not tuned in to local politics or whether in 1995 he attached less importance to matters of judicial independence than he appears to attach now or whether the importance that he attaches to matters of judicial independence depends on whether he thinks that I can be attacked for them as opposed to his new political colleague. Because contrary to what he said I am not the first Chief Minister – this is another thing that he said – I am the first Chief Minister that any Chief Justice has seen fit to raise a public concern about. First of all, and it just underlines the sheer bad faith that the hon Member employs in his debates. First of all, the Chief Justice has not raised any public or private for that matter, concern about the Chief Minister. If he has I have obtusely not noticed. But if the hon Member is wondering whether I preside over the first Government to come under criticism from the bench for matters to do with resourcing and the ability of the judiciary to function given that position, I have to tell him that he is mistaken. I am the second, the first one is sitting next to him. Because on Thursday 5th October 1995, on the occasion of the speech by the Chief Justice at the Opening of the Legal Year on that occasion, the Chief Justice said, I am reading from the press reports of it but I will happily provide for him a copy of his speech which I will have to obtain from the Supreme Court, "The Chief Justice has reserved some of his vintage humour for the occasion but not without pointing to the deficiencies in staffing levels and accommodation which have become the fixed theme of these occasions. There was thanks to the Police, the Prison and Probation Officer. Chief Justice Kneller noted the drop in staff and situations such as the absence of a Registrar for seven months listing statistics for cases handled. An up and running offshore finance centre must surely have a Supreme Court and staff it deserves, he asked out loud. So if there is a gravy train around Gibraltar I hope it arrives and stops a while here. It is time we had a master or a third judge to cut down the delay in client applications being given a hearing date. The earliest one can have and he carried on and he carried on. Judges, the hon Member may not be aware, have been pointing out apparent deficiencies in resources for many many years and all deficiencies in resources and staff reflect a decision of Government either not to give more money or not to give more staff. I did not jump up and down when this was published accusing the Chief Minister of the day of undermining civil liberties in Gibraltar, of poltical interference, of politicians taking control of the day to day affairs of the court, because he was failing to keep the court properly staffed and the Judge will say, "we are under staffed, we cannot do our work". If he wants to know what I would have done, since he does not, if a different Chief Justice had made similar remarks about a different Chief Minister, the answer is that he does not speculate because it happened in 1995 and before, practically every year, and the answer is that no Opposition has launched the tirade against a serving Government of Gibraltar that the hon Member has in bland ignorance of the facts launched on this particular occasion. And if he is not persuaded by what I am telling him, I will publish for him a complete litany of all such statements that have been made in the past by Chief Justices.

Mr Speaker, in case he is tempted to run away with the notion that this Government are somehow indulging in practices that he needs to speak in those terms about, compared to previous practices, he is mistaken as well, because if he has read Chief Justice Schofield's speech to Latimer, he would have come across the following statement; "The Registrar and Deputy Registrar of the Supreme Court of Gibraltar, according to Section 3 of the Supreme Court Ordinance are attached and belong to the Court. These officers are of course provided by the Government

but are appointed by the Governor. They carry out some judicial duties as well as being responsible for the administration of the Court. A few years ago a Registrar was removed on the directions of the then Chief Minister and transferred to the Attorney-General's Chambers. How this came about in the face of the Statutory provision, I do not know. I can only assume that this was an abhorration that would not be repeated today. This is what Chief Justice Schofield had to say towards his fellow Chief Justices about things of this sort in Gibraltar. I was not moved at that time, I was Leader of the Opposition at that time and I was not moved to issue a Press Release. We all know the case in question, we all know what happened and when. I did not come out with statements accusing the then Government of all these things which the Chief Justice subsequently described as an abhorration. If the hon Member wants to know what would have happened if a previous Chief Minister had had these things said of him by a previous Chief Justice, the answer is that the public record speaks clearly as to what the answer to this question is. The Hon Dr Garcia asks what the Government have against public enquiries. Mr Speaker, the Government have nothing against public enquiries except that we are critised for not having called more of them on many issues and the reason is that we call public enquiries when we think the facts require it and we do not call public enquiries when the facts do not require it. I must ask the hon Member to explain to me which of the facts he considers deserves a public enquiry. Is it the fact that the Chief Justice was not funded to go to Warwick University? Is it the fact that we took the position that we took on the trainee magistrates? Is it the fact that we want to be consulted like all previous Chief Ministers have been consulted on judicial appointments? Which of those three facts did he have in mind when he wrote to the Foreign Secretary demanding an immediate public enquiry? Which of those three facts, even if they were all true and improper, and I do not concede that any of them are improper; which of them deserves and justifies a public enquiry? That is why the Government have not called public enquiries, but we will call public enquiries on other issues upon which they can now be safely called. He should not worry. We would demonstrate to him that the Government have nothing against public enquiries when they are justified on facts. Of course, as always he asks, "why this personal abuse by the Chief Minister?". Mr Speaker, I very much regret it if the hon Member considers that simply having the outrageousness of his own statement pointed out to him is personal abuse of him. What I consider to be personal abuse is his quite gratuitous, unprovoked, unjustified and completely unnecessary statements in his own press releases. That is abuse. Trying to paint the Chief Minister and his Ministers as meddlers with the system of administrative justice, giving people the impression, if one could dupe them into believing it, that this somehow involves the fact that judges could not make decisions without political pressure. That is abuse and it strikes me as odd that the hon Members think that they are free to say whatever they like whether it is the truth, whether it is not the truth, whether it is justified, whether it is not justified in whatever terms they like and then when the Government stand up and simply spell out the reality and expose their statements and their positions for the rubbish that they are, then it is always the safety net, arrogant Chief Minister, personal abuse, terrible style, terrible ogre. That does not wash either anymore. They have played that part once too often.

"What is the duty of the Opposition?" he asked, as if to suggest that he had discharged it through his disgraceful little batch of press releases. I will tell him, since he appears not to know the answer, I will tell him what the duty of an Oppositon is in a parliamentary democracy when the Opposition thinks genuinely that the Government are interfering with the Judiciary, they bring debates, they bring motions to the House. How many motions have they brought to the House? None. They ask parliamentary questions. How many parliamentary questions have any of the hon Members and specifically Dr Garcia, and all of them for that matter, how many parliamentary questions have they asked since the Chief Justice delivered his opening of the Legal Year Address in October 1999. This is one year ago. How many parliamentary questions have they put down to hold the Government to account for what he was happy to tell public opinion was a threat to the very existence of civil liberties in Gibraltar. He appears to have thought that the Government were politically controlling the affairs

of the Courts and he was not driven even to put down a single parliamentary question. What it demonstrates is that he is not serious in his job as an Opposition Member. He is not interested in the answer, 'what is my duty as an Opposition'. He is only interested in what he can say and do to bring discredit to the Government regardless of whether it is true or justified. That is all that interests him. Otherwise he must tell me how many motions he has brought to this House and how many parliamentary questions he has put down in this House on such a gravely serious issue that he felt justified in writing to the Foreign Secretary demanding a public enquiry, because neither the Chief Minister nor the Government would take him seriously. That is the acid test of the responsibility and seriousness with which he discharges his duty as an Opposition Member. There appears to be no limit to the infantile debating techniques that the hon Member is willing to employ in this House. He says that it is clear that the Government are the ones that are doing the distorting and the misrepresenting because look the proof is here. They put out a public statement saying that the two reasons that the Chief Justice had in mind was the entertainment expenses and the foreign conference and the Chief Justice had to put out a statement contradicting. The problem is that of course he heard the proper chronology of events and explanations during the two hour speech that I gave him, but as he had already prepared a speech before, he was not quick enough to amend his speech, at least to reflect what he had just been told. Even if the hon Member has a written speech infront, surely the hon Member must have the intellectual nimbleness to depart at least from three lines when he has heard an alternative explanation. Instead of recognising or challenging the truth because the hon Member is free to say, "I have heard the Chief Minister's explanation and I do not believe him". He is free to do that. What he is not free is to rabbit on about how the fact that the Chief Justice had to put out a statement contradicting the Government on the two reasons he had in mind, that demonstrates that it is the Government that have been distorting the debate. Not three quarters of an hour after I have explained to him that the Chief Justice's language did not enable the Government or him to know what the true issues were that he had in mind and that when the Government put a public statement of the only true issues that it thought the Chief Justice had in mind, the Chief Justice did not put out a statement saying "no, those are not the true issues, it is these two". No, he just puts out a public statement saying those are not the two issues I had in mind, leaving the Government presumably to carry on playing 20 questions with itself. We played 20 questions when he delivered his first speech and then we played 20 questions again when he tells us we have not got the right answers to the first 20 questions. When the Chief Secretary writes to the Chief Justice and asks him what are the two reasons he has in mind and the Chief Justice writes to the Goverrnment through the Registrar to tell us what the two reasons were, the Government issued a statement saying we have been told by the Chief Justice that these are the two reasons and we gave a public explanation of both. The hon Member believes that that chronology of events and facts supports his contention that it is not he who has been distorting the debate. It is not he who has been misrepresenting the facts but the Government. I do not know why the hon Member insists on systematically underestimating the intelligence of everyone that could be listening to him. I wonder, Mr Speaker, because the hon Member Dr Garcia, who accused the Government in his Press Release of political interference in the appointment of Judges, that is what he accused the Government of, political interference in the appointment of judges. When I have brought a motion to the House and spoken at length about the extent to which the Government have been in the past and should continue to be involved on the appointment of judges, he has not even addressed the issue in his reply. He has not even addressed the question of the Government's involvement. No, the Leader of the Opposition has addressed, and I will come to that in a moment, that he has not even addressed the question which he thought last year amounted to the Government's seeking to have political interference in judicial appointments. And when we come to Parliament to debate it, when he has the opportunity to get it all off his chest, he does not even address the issue. In those circumstances the hon Member will forgive me if I come to the conclusion that he is not interested in discharging his role as an Opposition, what he is interested in is putting out little poisonous Press Releases when he does not have to face the

person that he is acusing. That is what he is interested in and that when he finds himself on his feet in this House, debating face to face, he simply does not have the courage to repeat the statements that he has made in the past because he knows that he is unable to defend them. There is no other explanation for his failure to have a go at the Government on what he told the public in Gibraltar was the Government attempting to politically interfere in judicial appointments. I do not know whether the hon Member is so naïve or ill informed to believe or to think that the previous Government never denied supplementary funding to the Judiciary. I hope that the hon Member is not so naïve or ill informed as to believe that the previous Government never denied judges money to go on foreign conferences or foreign trips. He cannot believe that surely. If he indicates to me that he believes it I will make public statements explaining it. I do not criticise. This is not intended as an attack .....

HON J J BOSSANO:

As a point of order. If the Chief Minister is going to make an attack on what the previous Government did or did not do, he should not do it in the rounding up after I have spoken. He had plenty of opportunity to make it before and I would have dealt with it. If he makes them now, I hope he will give way.

HON CHIEF MINISTER:

The hon Member must not interpret what I am saying as a criticism. I am saying that what the hon Member considers is so heinous of denying a Judge money in mid financial year beyond voted funds to go on a conference. If he thinks that that is new or unusual or that it did not happen under the time of the previous Government, he is mistaken, and that is not an accusation against the previous Government. I believe it is perfectly okay. That is what I am saying. The hon Member cannot build a case for the collapse of civil liberties in Gibraltar on a set of facts which have happened frequently with all previous Governments. Or does he think that any Government of Gibraltar opens the cheque book on its table to allow judges to travel abroad whenever they like and for whatever they like. Mr Speaker, I do not know whether the hon Member wants me to give way in the context in which I have made the point, but certainly that is the point that I was making. Does the hon Member believe having accused the Government of taking day to day control of the Judiciary because of reasons of not providing money for this conference to Warwick and if the other accusation that he makes against the Government is that we allegedly politically interefere in judicial appointments, I ask him in respect of the second, does he really think that the previous Chief Minister and his predecessors before him, were not consulted on judicial appointments to the same extent, because all I have done is ask to be consulted to the same extent as my predecessors were. All I personally have ever said to a Governor is "I want to have the same degree of consultation as my predecessors have enjoyed, and if you want to deprive me of that same degree of consultation, you have got to give me good reasons why established practices have been terminated". That is all I have ever said. The Chief Minister, the heinous ogre, that the hon Member think is a murderer of civil rights here in Gibraltar. Does the hon Member believe for a moment that the previous Chief Minister and his predecessors were not consulted. I tell him that they were. I tell him that the Leader of the Opposition was consulted, and quite rightly so. I think it is "an aberration" – to borrow the Chief Justice's own words – if judges were appointed in this jurisdiction without even a consultation which is not to say that the Government appoint or prohibit or give approval but simply a consultation of a judicial appointment and no amount of judicial utterances and no amount of statement by the Chief Justice and no amount of ill-informed press releases by the hon Member is going to dissuade me from the view that the sort of consultation that the previous Chief Minister enjoyed which is the same sort of consultation as I was seeking to uphold is proper. It is proper, it is not wrong and the Chief Justice can utter the contrary view as often and as intensely as he likes and in whatever court he likes, it is perfectly proper. What is improper is the suggestion that something which is a constitutional right in Bermuda should not even be done informally in Gibraltar advocating principles of separation of powers, that is what is improper.

The hon Member reviewed all aspects of security of tenure and all aspects of judicial independence admirably. If he wrote that speech himself I think he is in the wrong job. I think his talent is wasted in the job that he is doing if he is capable..... *[HON J J BOSSANO: And so is the Chief Minister.]* .....not just of writing that speech but indeed of conceptualising all the points that he has made without being prompted by others, I think he is grossly under-employed, not here as an Opposition Member, I am pleased that the House has members of that calibre, he is under-employed in his job outside this House. But the Chief Justice does not agree with him on security of tenure. This is what Justice Schofield had to say on the question of contracts and security of tenure, this is the same speech as at Latimer, just before it went off to Siberia, "It may be that a judge recruited from an overseas territory does not want to be committed to the jurisdiction and to the retirement age. It may be that the recruiting territory does not want to commit itself to an expatriate judge until retirement age, particularly in a small jurisdiction where some provision ought to be made for the emergence of local candidates for the very few judicial posts available. Furthermore, judges from overseas are very much an unknown quantity and it is often uncertain whether they will fit within the local perceptions of judicial conduct. It may be that the contract system is therefore a necessary evil but it is an evil which ought to be contained better within the written law or within the terms of the contracts themselves by more rigorous provisions in favour of judges who seek renewal of their contracts". And I agree with every word, indeed I agree with almost everything that the Chief Justice has said in this speech to the Latimer Conference. There is very little at issue between us in this speech but what the hon Member cannot do is abuse the points that the Chief Justice makes and fail to take notice of his own very recent pronouncements on the matter. Mr Speaker, I regret that the hon Member should assert that judicial independence is not guaranteed because one could meddle in the terms of the office holder and other conditions of service and salary. If there has been such meddling it has not been by me, the Chief Minister of Gibraltar does not appoint the judge so when he talks about the potential for meddling with contract officers presumably he is talking about the Governor because it is the Governor who makes the decisions on the appointment of judges and the extension of contracts and things of that sort. I will limit myself in the interests of winding this debate down, I can well understand that Opposition Members are not enjoying it and for that reason they are keen to see it wound down. But for the hon Member to say that the Government are engaged on something that has never happened before which is a witch hunt of a judge, well on what basis does the hon Member make that further preposterous statement? Because we put out public statements defending the Government against statements made by others, mostly he himself? What have the Government said or done which represents a witch hunt? Now I know the source of the stories to the international press about hounding them out of office. The difference between hounding him out of office and a witch hunt are practically indistinguishable. The hon Member simply does not understand the responsibility of office and if he believes that what the Government have done here today represents a witch hunt of a judge or that the impeccably responsible manner in which the Government have behaved in relation to the other matter that affected the Chief Justice until recently, if he believes that that is evidence of a Government conducting a witch hunt, all I can tell him is that I hope that he acquires a better sense of what the burdens and responsibilities of being in Government in this community are before he offers himself for re-election to the people of Gibraltar for that office because if he believes that this Government have conducted a witch hunt of the judge, I do not know which of all the allegations he now attributes to the Government, does he think that we bugged his phone? Does he think that we have had him under surveillance? Does he think that we invented all the stories about the maid? Which of the facts that are in the public domain, on most of which the Government have not commented, which of those does he think constitutes the witch hunt? The hon Member who is devoid of rational argument in this respect simply thinks that he can wave away the ineptitude of the position that he has defended for the last two years on this issue with little clichés such as witch hunt of a judge in the hope that that will capture the headlines. Mr Speaker, the hon Member must have learnt by now after so many unsuccessful attempts at elections that he does not

achieve that in that way. I do not know why the hon Member should think that we have done Gibraltar a disservice unless he believes that doing Gibraltar a service requires shutting up and accepting everything that others say about Gibraltar and its Government. I do not see why he thinks that Gibraltar is done a disservice by the text of a motion that he had indicated he was going to support, that is another thing for him to answer.

Opposition Members have heard from the Attorney-General the status of the Latimer House Guidelines and I propose to add nothing further to that.

If I can just respond to the points made by the Leader of the Opposition. I note that the hon Member did not wish to compete with me on theatrical performance but, of course, I suppose that if the dividing line between consultation and approval is a fine one, so is the dividing line between advocacy and theatre. I must say I have enjoyed this debate enormously, whether the fact that one enjoys advocacy makes it necessarily theatre, of course is a matter for others to think but certainly if it was theatrical it is because the statements that the hon Member has made publicly on this issue over a long period of time, yes the hon Dr Garcia deserved to be treated theatrically which is what his statements were, pure science fiction theatre.

Mr Speaker, I do not know if the Leader of the Opposition was intending to create the impression that when he was consulted this was somehow more akin to information than consultation. The hon Member must surely be aware that he was consulted by which I mean consulted, not just informed, on the occasion of every judicial appointment that occurred during his term of office. *[HON J J BOSSANO: As simple as that.]* Well, I have here in front of me a letter dated the 19th April 1994 addressed to the Personnel Manager, I was not in office in 1994 and it says, "Chief Justice extension of contract" - the sort of extension of contract that the Chief Justice says politicians must not be consulted about - "I have been asked to inform you that His Excellency the Governor, after consultation with the Chief Minister, has agreed to offer Mr Justice Kneller a further extension and at a recent meeting with His Excellency the Governor, Mr Justice Kneller agreed to undertake a further one year contract". *[HON J J BOSSANO: Now will he give way?]* Well, I have not finished, he may want to wait to hear them all. *[HON J J BOSSANO: Yes, I will hear them all.]* I have here in front of me a minute headed "JPs", it is dated March 1994, I was not Chief Minister in March 1994, he was, and it reads, "Ad Sec has cleared with the Chief Minister the selected list". I do not know whether "cleared with" represents more or less than consultation. I actually think that "cleared with" is much closer to "approved by" than the sort of consultation that I had asked for. Therefore, Mr Speaker, I do not know what sort of consultation the hon Member engaged in when he was Chief Minister. I have here with me a minute dated the 29th June 1993, another date on which the hon Member was Chief Minister and it is headed, "Additional Judge", it referred to Mr Justice Harwood and it reads, "I have only just been able to clear my lines with the Chief Minister on the Board's recommendation with which he is content". I do not know whether a statement of contentment represents consultation, information or whether it represents more. But certainly if this were a linguist conference I would say that "cleared with" and "is content with" is much more strong than simple "consultation". In relation to the procedure in 1993 for selecting the Additional Judge, the exercise that we politicians must have nothing to do with, "Please refer to your letter of the 12th May. I confirm that the Chief Minister is content with the proposed arrangements". I do not know why the Chief Minister needs to be content with proposed arrangements for the selection of a Judge which is a Governor's appointment and which he claims he was never consulted about. This is what the record shows. *[HON J J BOSSANO: Has he finished?]* No, I will tell him when I have finished. I have here a memo dated the 21st February 1991 and it reads, "Chief Justice extension of appointment", and it says, "As you are aware His Excellency the Governor and the Chief Minister have agreed to offer Mr Justice Kneller a new contract". Well, I do not know why the Chief Minister is agreeing with the Governor or why the Chief Minister's agreement was even sought for the giving of Mr Justice Kneller a new contract but it certainly would appear to suggest that there was a good deal more consultation on judicial appointments under his term of

office than he cares to admit or that he has informed the hon Dr Garcia about. On the 8th October 1990, in respect of the Judge then, "I am glad to say that with the agreement of the Chief Minister, His Excellency has approved your being re-employed for three years in the first instance". The hon Member must not misunderstand me. I do not criticise him at all for any of this. I think it is quite right that he should have been consulted to this extent on all of these issues, on all of these occasions. All I was trying to do was to ensure that whatever was the established practice, not just in his favour but in favour of his predecessor as well, should be continued until there was agreement that it should be discontinued, that is all. Therefore, Mr Speaker, I think that when we are debating between us, as is perfectly legitimate that we should do, whether or not Gibraltar Governments should be consulted on judicial appointments, we ought not to try and spin the argument on trying to confuse on the basis of what the word "consultation" means if one is consulted before or after the appointment board or whether I think we should accept at least this is what I would do on any debate between us on the extent to which the Chief Minister should be consulted that judicial appointments in Gibraltar are under the current Constitution exclusively decisions for His Excellency the Governor – I will give way as soon as I finish this – are exclusively a matter for Governors but Governors have for many decades consulted Chief Ministers which does not mean that the Chief Minister makes the decisions which does not mean that if the Chief Minister says, "No, I do not agree with that appointment" it does not get made. Consultation means consultation, it means that the names are run past one, I do not know, the hon Member gives an explanation, which I am happy to accept if that is how he saw it at that time, why he interviewed every applicant for the post of Chief Justice on the occasion that Mr Schofield was himself appointed. Every applicant went to the interview board and also for calls on His Excellency and the Chief Minister. I think this is absolutely right that they should, I do not say if it is right or wrong, I think that because one is going to be consulted one is entitled to have a view about the candidates so that one can express a view when one is consulted which does not mean that the Governor is going to say, "Well, Chief Minister, because you did not like this Judge's sentencing tendencies" which is what he said he questioned them all on or he explained to them all, "and therefore I will not appoint him". I am sure that is not what he expected from a consultation process and it is certainly not what I expect from a consultation process. A consultation process is a consultation process where one's views are sought without prejudice to the fact that the decision-maker, namely in this case the Governor, then makes his decision and I see absolutely nothing wrong in any of this. What I see wrong is that the hon Dr Garcia should have tried to heap the criticism that he tried to heap on the Government for doing no more than asking for the established practice to be upheld, that is all. That is what I think is wrong, for the rest of it we can debate in the Constitutional Committee as the hon Member has himself indicated what we think the position should be and what we want to propose to the UK Government as a consensus of what Gibraltar believes, taking into account or not taking into account the fact that we are a small country. It may well be that we think that it should be taken into account for future appointments of the judiciary. Mr Speaker, I regret that the hon Member should think, does he want me to give way before I move on?

HON J J BOSSANO:

Mr Speaker, I wanted him to give way for the very reason that I stood up and said it but if the Chief Minister chooses to rummage through the files in No. 6 Convent Place to find out what civil servants wrote to other civil servants so that he keeps them in his back pocket and brings them out when he has the final word and nobody can answer, then I am afraid it is a practice he indulges in on more than one occasion. I do not know what rights he has but I can tell him that if the person who is now the Chief Secretary writes to somebody saying, "The Chief Minister has agreed or no objection", I can tell him that as far as I was concerned, things were put in front of me on the basis not that there was an active process of involvement in the selection of anything but on the basis that if somebody's contract was going to be renewed as opposed to somebody new being appointed and the Governor thought it was a good idea to give an extra year to Mr Justice Kneller who wanted to stay an extra year, whether he stayed

another year or another 200 years, the man had already been here and what has that got to do with my putting my candidate as Judge or as Magistrate or as JP or as anything else? I think whether the present Government have been consulted by other Governors to the degree that I was or not, I am not in a position to judge. All I can tell him is I do not know why he is being ill-treated in this manner unlike every predecessor. What is wrong about him that the Governors do not want to consult him anymore? I cannot help that and I do not think he should hold us to blame for it. The facts are that the example that I gave in relation to the issue of judicial independence was that when Mr Schofield was selected he was not selected after consultation with me. I was not asked by the Governor. *[HON CHIEF MINISTER: Nor were we.]* "We are thinking of giving it to Mr Schofield, do you want Mr Schofield or do you want somebody else?" and the only reason why I said that was because the Chief Minister when he moved the motion had said, "Well the way that they are talking is about whether there is a difference between consultation and approval and between consultation and information and the dividing lines are very clear and somebody has said that the dividing line is not clear". Well, whether it is clear or not it is very clear to me because I have got a very clear recollection of it that the only input in that selection was that when I discussed it with the Chief Secretary I said, "Well on the interview board the only person that we know is David Hull who has been in Gibraltar many years ago and from what you tell me was very supportive that the Government of Gibraltar was responsible for pushing ahead with the Lands Memorandum and therefore since the rest are all strangers from a Gibraltar point of view, if he meets the necessary qualifications to be a Judge better somebody that is familiar with Gibraltar", end of story. At the end of the day the board took the decision, the board made the recommendation to the Governor and the Governor informed me who was being appointed. If they are not even doing that with him then I cannot explain why. But I am afraid no amount of memoranda written from somebody to somebody will convert it into a situation in where I had a voice in the selection of the individual because I did not.

HON CHIEF MINISTER:

Mr Speaker, in the first place, let me hasten to reassure the hon Member, first of all that I am not just talking about the appointment of Mr Justice Schofield, I do not care whether he participated in the selection of Mr Justice Schofield at all. These memoranda and this record which shows that he was consulted go back to 1990. *[HON J J BOSSANO: So?]* But look, the hon Member is feeling defensive about it, he should not. The issue here, he appears to have missed the point, is not his attitude upon being consulted, the issue here is that he was consulted from across the street and the Chief Justice challenged me publicly when I said that Chief Ministers are consulted and he said, "Well I have been through that earlier on today, I have never heard of it and it certainly has never happened anywhere else" and the records at No. 6 Convent Place which I do not rummage around in, I only have access to what I am told I am allowed access to. I do not even know where these files are kept. There are rules and I have every confidence that those who are employed to administer them keep them. The files at No.6 Convent Place are replete with incontrovertible evidence, unchallengeable by anybody with a modicum of integrity that there is consultation, at least anybody who knows the facts. I am quite happy to accept with no difficulty at all, that this Chief Justice, having just arrived or having arrived just a couple of years earlier, he may not have known. Well if he did not know he should just have said that he did not know rather than challenge the Government publicly, impugning the accuracy of the Government's statement. That is all the Government were saying. I have had no consultation at all, no one has ever sent me lists for clearance, no one has ever asked me whether I am content, no one has ever said in a memorandum about me "with the agreement of the Chief Minister I am happy to offer you an extension of contract". I started this debate by telling the hon Member that I discovered about the judicial appointments listening to the radio and that is the whole issue. This is how this issue began. Because that happened and I asked for advice, how could I possibly have known whether Governments and Chief Ministers are consulted or not on judicial

appointments? But when I heard the radio, I said, "This cannot be right, it just cannot be the case. I refuse to believe that my predecessors had learnt about judicial appointments on the radio". And when I asked the Chief Secretary, "Is this what there is?" The advice was, "No, this is the first time that this has happened in recent memory" and then I enquired "Your Excellency, what on earth is happening?" I do not want to politically interfere in judicial appointments, all I want is that there should not be unilateral constitutional reform or practice by the Convent behind the backs of a new Chief Minister, that is all. That, at the end of the day, I would have thought was something that the hon Members would support the Government on instead of rushing to the conclusion that the hon Gentleman rushed to, that all the Government were defending political interference in judicial appointments and the Government were trying to politically interfere. These are the simple facts of the matter.

Mr Speaker, I think I have not exaggerated any issue as a result of feeling to be the offended party although I do think that the Government have been the offended party. In different circumstances the Chief Justice's remarks and the subsequent public debate in the run-up to a general election in Gibraltar could have been very consequential if public opinion had not apparently been so ready to accept what I was saying. This could have had an affect on an election result and I think the Government are the offended party, not only on the facts, not only on the merits of the facts but on the timing and on the procedures that were followed to conduct this public debate. I do not think I have exaggerated any issue at all. I have not rubbished, as he eventually himself recognised, the Latimer proposals. I said repeatedly this should not be misinterpeted to being that I am rubbishing the Latimer proposals. No, Mr Speaker, I was careful to explain to the hon Member that what I was rubbishing, what I was being extremely critical of, I do not know if that is what the hon Member interpets as exaggeration, what I was being extremely critical of was somebody who should have known better launching a public debate on the Government of this consequence on the basis of a document of that status and he has not heard it now from me he has also heard it from the Attorney-General and I had no idea what he was going to say here today, none at all. That is what I think is objectionable, that public opinion in Gibraltar should have been lead to believe that in not following to the letter the Latimer House Guidelines the Government were somehow being bad, a bad boy in matters of judicial independence. The Latimer House Guidelines are not adopted by anybody. That is what I made clear. I made clear that my principal objection was the abuse of the Latimer House Guidelines by serving them up to public opinion as if it was the Gospel – I used the words "the Gospel" and "Moses' tablet", hon Members will recall – when they are nothing of the sort and I believe that the Government have also been hard done by on that aspect as well.

It is perfectly okay for the Bar Council to think that the Latimer House Guidelines are a good thing and should be adopted just as it would have been okay for the Chief Justice to have said "I think", as he obviously does, "the Latimer House guidelines are a good thing and should be adopted". What I think is not okay is to launch the Latimer House guidelines in Gibraltar without explaining what their international status currently is, so that people can objectively judge the Government against them for non-compliance with them. That is the issue to which I take objection. The hon Member says we have not made up our minds or we had not made up our minds until we heard the Attorney-General on the merit of the Latimer House proposals. Mr Speaker, he may not have made up his mind about the Latimer House proposal, but the hon Member sitting next to him Dr Garcia had made up his mind about the merits of the Latimer House proposals because he had put out public statements lambasting the Government on the basis of the Latimer House proposals, so he at least must have made up his mind about the Latimer House proposals. I do not know whether now that he knows that the Latimer House proposals are in Siberia, whether he will now retract any of the accusations that he made against the Government on the basis of reliance on them. But the Leader of the Opposition who did not himself express a view on the Latimer House guidelines is free to say that the Opposition had not formed a view on the Latimer House guidelines. The Hon Dr Garcia is not free to say that. Mr Speaker, the hon Member said

that he could not identify whether we could identify the law, the hon the Chief Justice appears not to have that difficulty. He put out a public statement on the 11th November 1999 saying, "The Gibraltar Constitution sets out clearly a separation of powers between the Legislature, the Executive and the Judiciary. Enshrined in the Constitution is the concept of the independence of the Judiciary. This is what he says and obviously his search of the constitutional text must have been more productive than the hon Member's has been or alternatively if there is nothing to state his statements in that respect either. That is his view. I would have to admit that I have not studied the Constitutional text so closely that I can get on my feet and express a view as to the extent, if any, to which it sustains the principal. I would be very surprised if it did not. There is also the concept of common law and that is to say principles of law established not in Statute but in the decision of cases, convention and practice of that sort. I must say it is interesting but I have never heard anybody express the view that perhaps the concept of the independence of the Judiciary is not sustained in local law and is perhaps something that others will have the time to look at and indeed that we will bear in mind when we make constitutional proposals.

HON J J BOSSANO:

It is not then that there is a specific Ordinance which they have in mind when they say, safeguarded in Gibraltar by law?

HON CHIEF MINISTER:

No, Mr Speaker. I have no doubt that the law does uphold the concept of judicial independence whether or not there is a Statute that says so specifically. Therefore, Mr Speaker, if I correctly understood the hon Member when he said, "I believe that there should be consultation", I think that we are therefore agreed. I think we have both said here today that we think that there should be consultation with the Chief Minister of Gibraltar on these issues and that is the only proposition that the Government have sought to uphold. Mr Speaker, I therefore hope that the hon Members will accept the factual of the political points that the Government have made to them. At the end of the day they are only voting on the text of the motion, but I hope that they are able to accept much, if not all, of what I have said to them and that the issues here will now be more sharply in focus and context for them in relation to the whole of the last 18 or 24 months. I should just finish by saying that I have not defended or sought to defend the principle in large or in small countries or rather in small or in large countries whether or not judges should be appointed by politicians or not. I have never expressed a view on that except to say that in our constitutional ideas we had pencilled in a judicial appointments commission, independent of the Government. This debate has never been, as far as the Government are concerned, about whether the politician should or should not appoint judges. I agree that they should not in a small jurisdiction and I think certainly whilst we are in Government and from what they have said today whilst they are in Government, should they return, that is not going to be the case. The debate as far as the Government are concerned is about consultation, it has been about defending the integrity of the Government's funding of the Judiciary and it has been about defending the Government's credibility when its simple statement that there has historically been consultation on judicial appointments was falsely challenged in public. That is all this debate has been about and insofar as consultation is concerned, all that I have asked is that I should enjoy the same degree, no more and no less, the same degree of consultation as my predecessors and really my most immediate predecessor has enjoyed given that it has got to be recognised that with the passage of time Gibraltar makes constitutional progress and that we all benefit from some of the advancements made by our immediate predecessors and I think that that is good.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Could I just say something on a point of clarification?

MR SPEAKER:

How can you clarify if you have not spoken? But anyhow say it.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Well for the record, on a point of order. It is coincidence obviously that I am here today standing in for the Financial and Development Secretary but I detected some concern on the part of the Leader of the Opposition regarding access to papers from the previous administration and I think I should clarify the terms on which those papers were released. I was asked whether the Government at the time were consulted in respect of different appointments and obviously I go to the files. The papers which the Chief Minister has quoted are taken from Personnel Department files, not from files in the then Chief Minister's office at No. 6. They do not reveal what the Chief Minister may or may not have said although obviously they do record that he was content or not content, in this case content, with the procedure followed. It does not mean to say that the Chief Minister expressed a view in favour or against and my recollection certainly is that he was neutral insofar as the individuals were concerned but the reality of it is that the Government of Gibraltar were consulted and I in fact was among the first to join the interview boards for all these appointments to represent not just my own views as to the quality and potential of the candidates but also to express the Government's own views about matters which related possibly to policies, and so on. That is all I wanted to say, thank you.

Question put on the motion, as amended. Passed unanimously.

## BILLS

## FIRST AND SECOND READINGS

The Hon the Minister for Tourism and Transport moved under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed to the First and Second Readings of the Bill.

Question put. Agreed to.

## THE TRAFFIC ORDINANCE (AMENDMENT) ORDINANCE 2000

HON J J HOLLIDAY:

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

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

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

Mr Speaker, Section 99(9) of the Traffic Ordinance up until now has had a fixed penalty for a parking offence, that would be £5. The Government consider it unhelpful that primary legislation should spell out the amount, which needs to be paid as a fixed penalty. This requires a Bill before the House everytime that the Government wish to review the scales of penalties and the reality is that the level of penalty and indeed fees properly belong in secondary legislation. This Bill therefore provides for this. The Bill also addresses the second issue, the power to fix the level of the penalty that would be vested in the Minister with responsibility for transport rather than the Governor. This brings the legislation in line, the provisions for this purpose elsewhere in the laws of Gibraltar. I commend the Bill to the House.

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

HON J C PEREZ:

Mr Speaker, I think the Minister is wrong in thinking that he has to amend the Bill in order for the fine to have to be changed by legislation rather than by regulation. As far as we can see, the Governor is, in terms of this Ordinance the Minister, and if we are going to change therefore the Minister can by regulation change

the fee without introducing this in the House. If what the Government want to do is change everywhere that it says Governor so that it should say Minister, then we ought to start by doing it through all the Bill, because by this amendment, what we are going to have is a situation where in other parts of the Bill we are talking about the Governor, whereas on the penalty side we are talking about the Minister and given that the Governor is the Minister, it does not make sense that we should do this. If the Minister for Traffic wants to raise the fine, we would certainly not vote in favour, but if that is the purpose of it, he has got the power at the moment under the Ordinance of doing it by Regulation if he wants to without having to bring this Bill to the House.

HON CHIEF MINISTER:

Mr Speaker, my understanding is that we need not pursue the Bill. We can leave it on the Order Paper for future amendment or future consideration. If we are wrong on that we welcome Mr Speaker's guidance.

MR SPEAKER:

If you adjourn sine die today, you have got to re-introduce the Bill.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House sine die.

Question put. Agreed to.

The adjournment of the House was taken at 8.30 pm on Monday 20th November, 2000.