GIBRALTAR

HOUSE OF ASSEMBLY

HANSARD

12th FEBRUARY, 2001

(adj to 13th, 15th, 19th February,
5th & 26th March 2001)

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Fourth Meeting of the First Session of the Ninth House of Assembly held in the House of Assembly Chamber on Monday 12th February 2001, at 3.00 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 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

PRAYER

Mr Speaker recited the prayer.

CONFIRMATION OF MINUTES

The Minutes of the Meeting held on the 1st September 2000, having been circulated to all hon Members, were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

The Hon the Chief Minister laid on the Table the Ombudsman's – 1st Annual Report (April 1999 to December 2000).

Ordered to lie.

The Hon the Minister for Trade, Industry and Telecommunications laid on the Table the Financial Services Commission Annual Report and Accounts for the year ended 31st March 2000.

Ordered to lie.

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

(1) Statement of Consolidated Fund Reallocations approved by the Financial and Development Secretary (No. 1 of 2000/2001).

(2) Statement of Consolidated Fund Reallocations approved by the Financial and Development Secretary (Pay Settlement – 2000/2001).

(3) Statement of Improvement and Development Fund Reallocations approved by the Financial and Development Secretary (No. 1 of 2000/2001).

Ordered to lie.

ANSWERS TO QUESTIONS

The House recessed at 5.30 pm.

The House resumed at 5.50 pm.

Answers to Questions continued.

The House recessed at 8.20 pm.

The House resumed at 8.35 pm.

Answers to Questions continued.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Tuesday 13th February 2001, at 9.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 11.00 pm on Monday 12th February 2001.

TUESDAY 13TH FEBRUARY 2001

The House resumed at 9.30 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 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

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 J J Holliday – Minister for Tourism and Transport
The Hon T J Bristow – Financial and Development Secretary

IN ATTENDANCE:

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

ANSWERS TO QUESTIONS continued.

The House recessed at 10.15 am.

The House resumed at 10.30 am.

Answers to Questions continued.

The House recessed at 12.55 pm.

The House resumed at 3.00 pm.

Answers to Questions continued.

The House recessed at 5.30 pm.

The House resumed at 5.45 pm.

Answers to Questions continued.

The House recessed at 8.00 pm.

The House resumed at 8.20 pm.

Answers to Questions continued.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Thursday 15th February 2001, at 9.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 10.00 pm on Tuesday 13th February 2001.

THURSDAY 15TH FEBRUARY 2001

The House resumed at 9.35 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

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 T J Bristow – Financial and Development Secretary

IN ATTENDANCE:

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

ANSWERS TO QUESTIONS continued.

The House recessed at 11.35 am.

The House resumed at 11.50 am.

Answers to Questions continued.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Monday 19th February, 2001, at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 1.45 pm on Thursday 15th February 2001.

MONDAY 19TH FEBRUARY 2001

The House resumed 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 J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social Affairs
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 R Rhoda QC – Attorney General

IN ATTENDANCE:

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

ANSWERS TO QUESTIONS continued

BILLS

FIRST AND SECOND READINGS

THE DRUG TRAFFICKING OFFENCES ORDINANCE 1995 (AMENDMENT) ORDINANCE 2001

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Drug Trafficking Offences Ordinance 1995, be read a first time.

Question put. Agreed to.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Monday 5th March 2001, at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 12.30 pm on Monday 19th February 2001.

MONDAY 5TH MARCH 2001

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

Question put. Agreed to.

The Hon the Chief Minister laid on the Table the Accounts of the Government of Gibraltar for the year ended 31st March 1999 together with the Report of the Principal Auditor.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE DRUG TRAFFICKING OFFENCES ORDINANCE 1995 (AMENDMENT) ORDINANCE, 2001

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill to amend the Drug Trafficking Offences Ordinance 1995 be now read a second time.

This Bill forms an integral part of the Government's commitment to international co-operation in the fight against crime. The Bill addresses difficulties our judicial authorities have been encountering in complying with Letters of Request sent to us by foreign judicial authorities arising out of investigations into drug trafficking. In consequence, the Government now consider that an amendment should be made to the Drug Trafficking Offences Ordinance 1995 with respect to Production Orders.

As the Drug Trafficking Offences Ordinance 1995 currently stands "Production Orders" can be obtained under section 60. "Production Orders" is a term of art describing a court order requesting a named person to produce the documents referred to in the Order. A large number of applications have been made for such Orders as a result of requests received from abroad. In fact, most Letters of Request arise out of investigations into drug trafficking and Production Orders are invariably required as the evidence sought is usually in the form of documents held by financial institutions and locally registered companies.

The Drug Trafficking Offences Ordinance 1995 already makes provision for obtaining "Production Orders". The difficulty is that there is no provision for the onward transmission of the evidence seized to the requesting authority abroad. This means that although we can obtain a Production Order within a matter of days from receiving a Letter of Request, we cannot provide the requesting authority with the documents seized. To do that it is necessary for a Court to be nominated under section 40 with the Court calling the witnesses to give evidence and producing the documents again, this time in Court and as a formality. Nominating a court, calling witnesses and setting a date within the current state of the court calendar can take many months especially where Requests are urgent and this is thought to be undesirable. It would therefore simplify and speed up matters if a mechanism would exist for the onward transmission of evidence seized by virtue of a Production Order. Such a mechanism already exists in the case of Search Warrants. Section 43 of the Drug Trafficking Offences Ordinance allows the Attorney-General to apply for a Search Warrant where he has received a Letter of Request. That section, however, is of limited application as the only evidence that can be seized under it is evidence which is on premises owned or controlled by the defendant himself and that obviously provides our judicial authorities with difficulties where the evidence is being held by a bank, for example.

To overcome this difficulty, the Bill now before the House introduces a new section 43A into the 1995 Ordinance. This new section combines elements of section 43 relating to Search

Warrants, with elements of Section 60 relating to Production Orders in order to enable the Attorney-General to obtain a Production Order as soon as he receives a Letter of Request and for the onward transmission of the evidence after the Order has been executed. The Bill does not interfere with the existing section 60 which is left to stand for domestic Production Orders.

Mr Speaker, a number of administrative errors have crept into the printing of the Bill and there is an error of drafting which results in the existing section 43 being inadvertently repealed, which is not the intention. In this context I beg to give notice that at the Committee Stage I shall be moving a number of amendments, as follows:

Firstly, the heading of the second clause is to be amended by substituting for a reference to "section 43" a reference to "the Drug Trafficking Offences Ordinance 1995". Then, for the words "section 43 of the Drug Trafficking Offences Ordinance 1995 shall be replaced with", substitute with the words "2. After section 43 of the Drug Trafficking Offences Ordinance 1995 there shall be inserted....". The effect of that amendment will be that the proposed new section being introduced by this Bill will be added as section 43A after the existing section 43 which will remain in the principal Ordinance as opposed to as the Bill is presently printed which implies that section 43 is being repealed because it says "section 43 shall be replaced with the following new section". That is not going to happen. The following new section is an additional section 43A rather than instead of the current section 43.

I commend the Bill to the House.

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

HON J J BOSSANO:

Mr Speaker, the first thing I need to say is that we need more time on this because we have been looking at this Bill entirely on the assumption that what was being done was replacing section 43 even though there seems to be a contradiction between the Explanatory Memorandum and the actual provisions in the law but since the Explanatory Memorandum does not form part of the Bill we assumed that it was the Explanatory Memorandum that was wrong which said the Bill amends the Ordinance by inserting a new section 43A but then when we went to look at it, it says that section 43 of the Drug Trafficking Ordinance shall be replaced by the following new section which is in fact putting section 43A in place of section 43. Consequently, in analysing the position that we ought to take in relation to the Bill, we were taking a position on the basis that this Bill appeared to be doing the opposite of what it purported to do since if we compared section 43 with section 43A there seemed to be more obstacles in this one than in 43. Given that we are keeping section 43 and introducing section 43A I think we need to re-examine the whole of the new provisions to see how the two sit together. I am afraid the explanation that we have had in the last 10 minutes is not sufficient given that the notice that we had of the Bill which effectively removed section 43 and one of the things we could not understand was why in section 43 it was enough to go to a Justice of the Peace and in section 43A it requires a Judge. That seems to us to be making it more difficult and not easier to do. Obviously, if we take everything today and we then go into the Committee Stage then I am afraid we are telling the House we have not had enough time in the light of the fact that we are not repealing section 43 and the whole approach of the issues we were going to ask for explanations on assumed that section 43 was not going to be there. My problem in speaking on the general principles of the Bill is that the principles that I thought that I was talking to which was a repeal of section 43 is not a principle in the Bill any more. Therefore, Mr Speaker, I cannot continue with the points I was going to raise given that section 43 is still there. They all related to the disappearance of section 43.

HON CHIEF MINISTER:

Mr Speaker, I have to say I have a considerable degree of difficulty comprehending the alleged difficulty that the hon Member is in and accepting what he says. On the basis that he

thought that we were repealing section 43 altogether all he then has to do is ignore the part of his notes which relate to his views on the principles of replacing section 43. The hon Member must also have formed a view by now, since he was due to speak on it this morning, on what he thought was section 43A(1) albeit that it was different. Mr Speaker, I can accept that it renders redundant some of what the hon Member might have wanted to say but I do not see that it affects what he was going to say about the text of section 43A itself. However, he should not worry because this is the Bill that the Government are going to leave on the agenda anyway as the one Bill that we need to carry forward to the next sitting. The hon Member will have plenty of opportunity to speak both as to the principle and as to the detail I suppose with Mr Speaker's indulgence when we come to the Committee Stage.

The hon Member has really only posed one question and that is that the new section 43A requires a Judge as opposed to a Justice of the Peace. Mr Speaker, the hon Member ought to bear in mind that this section is capable of being used against people who are not themselves under investigation but who have information relating to the investigated person - banks, people of that sort. Whereas the section relating to Search Warrants is limited to evidence under that section. One can only obtain information and evidence that is on the premises of the accused or investigated person. That does not apply in this case and it is therefore thought appropriate that entities, third parties, who may have potential issues of breach of confidentiality and will need maximum protection under the law should have the comfort that this matter will have been looked at by a senior Judge before they are required to give any evidence. That is the only point that the hon Member has made.

The other point that I should add is that this simply hastens a procedure that is already available in the sense that at the moment one cannot obtain a Production Order and then one has to have a court appointed, examiners they are called, and the evidence then has to be re-presented by the institution that had it in the first place, formally in evidence. Only then it is formally in evidence and only then can it be made available internationally. This is designed to short circuit that and enable the evidence to be provided as soon as it has been obtained following the issue of the Court Order ordering it to be provided.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

THE PIRACY ACT 1837 (AMENDMENT) ORDINANCE 2001

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Piracy Act 1837 as it applies to Gibraltar, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, hon Members will recall that in April last year this House passed an amendment to the Criminal Offences Ordinance (Amendment) Ordinance abolishing the death penalty for what I think was the offence of arson in Her Majesty's Dockyard. Later, in June last year, we also introduced an amendment to the Prison Ordinance to repeal the part of the Prison Ordinance relating to how prisoners to be executed had to be dealt with once they were admitted into prison. At that stage we thought that we had removed from the Laws of Gibraltar all provisions relating to the death penalty. There is, however, in the

UK Piracy Act of 1837 a provision in section 2 that reads as follows:

"Whosoever with intent to commit or at the time of or immediately before or immediately after committing the crime of piracy in respect of any ship or vessel shall assault with intent to murder any person being on board of or belonging to such ship or vessel or shall stab, cut or wound any such person or unlawfully do any act by which the life of such person may be endangered shall be guilty of felony and being convicted thereof shall suffer death."

Section 2 of that UK Piracy Act of 1837 is extended to Gibraltar by virtue of section 3 of our English Law Application Ordinance. Our English Law Application Ordinance makes provision for the extension of laws of UK laws to Gibraltar but not for their extension as they might from time to time be amended in the UK. If we in our Ordinance extend an English Law to Gibraltar and that law is subsequently amended in the United Kingdom it continues to apply in Gibraltar as unamended, as it was when it was originally extended to Gibraltar. That section of the UK Piracy Act of 1837 has in fact been amended in the UK, back in September 1998, under the Crime and Disorder Act of that year. When the UK therefore amended their own Act it did not have the effect of amending the version of the English Act that was applied to Gibraltar by virtue of our application of English Law Ordinance. There is specific provision in the Application of English Law Ordinance entitling this House to amend any United Kingdom legislation which has been extended to Gibraltar under the provisions of our Ordinance. We would not have that ability if the extension to Gibraltar were achieved on the face of the Act itself. If the extension of an English piece of legislation to Gibraltar is effected by the English Parliament then this House regrettably does not have the werewithal to amend that, but because the extension is by virtue of our own Application of English Law Ordinance, the Ordinance specifically says that this House can amend it. The purpose of this Bill is simply to finish off what we thought we had achieved back in April of last year which is to abolish all vestiges of the death penalty in Gibraltar by now removing it from this English Act as it applies to Gibraltar. I commend the Bill and expect that it will enjoy the House's whole support.

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

HON J J BOSSANO:

Mr Speaker, on the general principles of removing the death penalty we are obviously all in agreement since that has already been done in every other respect and there is no reason why it should be retained for this particular case. On the general principles of the use of the English Law Application Ordinance I must say I think it is the first time that I recall ever having seen a Bill before the House doing this and it certainly reads odd that it says here amending a UK Act of Parliament. I assume that technically this must be the way to do it although I would have thought that applying the section as it reads now in the United Kingdom presumably would be having the same effect. The only doubt that we have in our mind is that since we have not seen, certainly I have not seen it since 1972, a Bill here that amends a UK Act it looks peculiar but if the power is contained in that Ordinance, that is fine.

HON CHIEF MINISTER:

Yes, Mr Speaker, the power is indeed contained in the Ordinance. It cannot any longer be done by the UK given that this is not how their legislation reads. We would be in the rather peculiar position of the UK Parliament amending, for the purposes of Gibraltar only, a UK Act which for the purposes of the UK no longer reads as they are purporting to amend it from. That was the first point that the hon Member made. The second point that he made was.....

HON J J BOSSANO:

The point that I made was, if the law in the United Kingdom is changed already, do we have the power in the Ordinance now to say the Piracy Act shall apply as it reads now?

HON CHIEF MINISTER:

No, Mr Speaker, the hon Member is not there raising the mechanics for the amendment. He is simply raising there what he thinks the terms of the amendment should be. We can amend it to read whatever we like. This is to the same effect as in the UK. We cannot just adopt the UK Act because we do not know.....we will have to study to see what other amendments may have been introduced into the UK Act. All that the Government are attempting to do here is to substitute life imprisonment for death penalty. We are advised that is easily achieved by saying so in clear words. It may well be that this is exactly what the UK Act says. I cannot imagine there is more than one way of saying this but certainly the effect is exactly the same. It may be that the language is the same. I have not personally compared this language with the language that was used in the UK on the 30th September 1998 to bring about exactly the same results. If I was a beer drinking man I would bet a beer with the hon Member that this is the same words.

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 SOCIAL SECURITY (MISCELLANEOUS PROVISIONS) ORDINANCE 2001.

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Social Security (Employment Injuries Insurance) Ordinance, the Social Security (Insurance) Ordinance, the Social Security (Open Long-Term Benefits Scheme) Ordinance, and for matters connected thereto, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the purpose of this Bill is to enable the Department of Social Security to modify the manner in which Social Insurance contributions are collected and have been for the past 48 years by making use of modern technology and introducing a more efficient computerised collection system. As announced in the Government Press Release of the 15th December 2000 the payment of Social Insurance contributions will be unified with the PAYE collection system and would now be payable in cash or by cheque and would no longer require the purchase and adhesion to a Social Insurance Card of Social Insurance stamps.

Mr Speaker, the new system will operate as follows: At the commencement of employment the new computer system in the Department of Social Security will generate a quarterly contribution schedule for each employee or self-employed person registered with the Employment Service and the Department of Social Security. This quarterly schedule, which has to be returned within 15 days after the end of each quarter, will replace a yearly insurance card that was previously issued in respect of each employee or self-employed person. Four quarterly contribution schedules will be issued by the Department's computer in respect of each contribution year in respect of each employed or self-employed person. This document will serve as a record of the number of contributions paid in respect of an insured person in a contribution quarter and that information will be recorded on a quarterly basis in the insured person's file held

on the computer. Employers may also submit the information required from them on a diskette version of the paper schedule. For those employers that are computerised they can just hand in a computer diskette containing the information rather than on the manual form. It is envisaged that a secure e-mail facility may be available before the end of the year by which the return can be made. It should be noted that the actual payment of contributions have to be made to the Income Tax Office on a monthly basis, not later than 15 days after the due date. Although the information is returnable by the employer quarterly, payments have to be made monthly. At the end of each contribution quarter the computer system will reconcile the relevant monthly payments with the quarterly schedules of information returned by the employers. A similar procedure will apply in respect of self-employed persons and persons making voluntary contributions.

Mr Speaker, the benefits and advantages of these new arrangements, the Government consider to be the following: first, it is obvious that employers in general will benefit administratively from the new unified collection system. As from the 1st January 2001 there has been no further need for employers to purchase and affix Social Insurance stamps on cards on a weekly basis. The relevant payment for Social Insurance contributions can now be made at the Income Tax Office at the same time as PAYE when they both become due at the end of each month. Furthermore, the security risk of employers having to hold large quantities of insurance stamps will also be eliminated. Mr Speaker, therefore from the employers' point of view the advantages are that one does not have to send the staff to the Post Office to queue up to buy these Social Insurance stamps and then throughout the year the employer having invested in stamps and having stuck them on the cards, they then keep somewhere in their office, there is always a security risk because until that card is handed in at the end of the year, if that card is stolen or gets mislaid then the employer will in effect have lost all the value of the stamps that he had affixed on the card up to that date. Of course one does not comply with one's obligations by going to the Post Office to buy the stamps, one complies with one's obligations by handing in the card at the end of the year with 52 stamps stuck on it. Throughout the whole year employers were running risks of theft or loss of these Social Insurance stamps that the law presently requires them to purchase and affix on to their cards.

From the Government's administrative point of view the new system will be far more efficient. The fact that contributions are paid monthly and recorded in the insured person's file on a quarterly basis will enable the Department of Social Security to detect and follow up the non-payment of contributions more speedily and effectively. Details of employers in arrears will now be available on a monthly basis whereas before no information was available until about eight months after the end of the contribution year. An added benefit of the new computerised system is the wealth of statistical information about insured persons and employers that will now be readily available whenever the hon Members choose to ask them. Hon Members may be aware that when employers are not complying with their Social Insurance contributions there are two losers - one is the Government that loses revenue but another loser is the employee. The other loser is the employed person himself whose pension contribution record has been affected, whose entitlement to some of the statutory benefits are being affected. But, of course, because the employer does not have to hand in the card until the end of the year and then there was a long period of administrative grace, employees could never find out if they were being jeopardised by their employers' lack of compliance with the employers' obligation. There are cases of employers who are deducting the employee's contribution from the pay packet, then not buying the stamps and affixing them. That year runs out, eight months later and perhaps with the administrative delays that there are in following up arrears it could be two or three years of arrears to the prejudice of the employee but the employee is not aware of that situation. The present position, with this amendment, will enable the Government to monitor on a monthly basis whether employees are in compliance. It will therefore be possible for employees to come in and obtain up to date information during the course of a year as to whether their employer is making their contributions to the Department of Social

Security. Therefore, everybody wins in the Government's judgement. There are advantages to the employer, security, less bureaucracy, less having to send staff to queue up in the Post Office. The employee has greater security that his rights are being protected to timely compliance which he is better able to check. The Government obtain an improved cash flow from the fund from these purposes and the House and the Government both benefit from an availability of a much larger amount of management information in terms of employment statistics and things of that sort. Therefore, Mr Speaker, I commend the Bill to the House in the hope that the Opposition Members will see the virtue of these amendments which, in any event, are nothing more than the necessary statutory amendment to policy announcements that Government have already announced. 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 have no problem with the principle of collecting the money through the Tax Office as opposed to collecting it by insurance stamps. Obviously, it is not a change, as far as we are concerned, of policy in terms of Social Insurance. It is simply what is the most efficient way of getting the contributions in and credited to the fund which belongs not to the Government, as far as we are concerned, but to the employees because it is for the benefit of the employees that these contributions are made. Much of the information that we have been provided with in the context of the general principles of the Bill is not contained in the Bill. Presumably this will be reflected in the Regulations for which there is provision and obviously, in the light of the information that has been provided, we will in future be seeing how it is working once it has been brought in.

I think there are a number of points that I would like clarification on. One is how can it be that since the 1st January 2001 there has been no further need to pay Social Insurance stamps and people have been able to do it by going to the Tax Office when that is what we are legislating to enable now. In fact, if they have been going to the Tax Office how did the Tax Office have the legal authority to collect the payments over the counter since that is supposed to be the result of the decision that this House has not yet taken in creating that possibility. Obviously the Regulations that need to be passed will be after the Ordinance receives the consent so if it has been happening already, that would indicate that it is possible to do that administratively without the law being changed. If it is not possible to do it then it is difficult to see what the legal basis for these payments have been until now and will continue to be until this whole process is put into the statute book. The other element of principle is that the move from fines to the levels which we support, although it has not been mentioned because that is a principle which has been going on for a very long time and I think we need everything in place in terms of the levels of fines as opposed to amounts of money which has not been mentioned. I say we are in favour of it although it has not been mentioned, the amendments which substitute for amounts of money levels of fines is a process which we support. In terms of one specific point that does not seem to me to fit in, there is in the provisions under the proposed section 8 of the Ordinance, the substitution of the existing section 8 by a new section 8 which is on page 19, it is headed "Method of Payment of Contribution". Mr Speaker, (a) in section 8 says that Regulations may be made for assessing the amount of contribution liable to be paid by any person. I do not think that is about the method of payment which is what the title of that section is and I do not think it fits in with the other provisions in the other sub-sections which are all about the methodology as opposed to the quantum of contributions. I think that assessing the amount of contribution that a person has to pay does not fit in there and I am not sure what the implications of that are. At least that appears to be saying that Regulations made under the part of the Ordinance which deals with the method of payment can in fact determine the value of the contribution in relation to the benefit. If it is assessing the amount of contribution liable to be paid presumably it is assessing the amount of contribution liable to be paid in order to qualify for something. I thought that that was taken care of elsewhere in the Ordinance and not under "Method of Payment".

I do not think that the present section 8 which is not in exactly the same form as this one I do not think covers that point. It is something that I am bringing to the notice of the House so that it can be looked at between now and the Committee Stage.

HON CHIEF MINISTER:

I am grateful to the hon Member for his indication of support to what this Bill is trying to achieve. If I could just answer his first point first - how has the system been working since the 1st January given that the legislation is not yet in place and does that mean that the legislation is unnecessary? The answer is that under the present legislation, and indeed under the new legislation, Social Insurance contributions are payable in arrears, monthly, but in arrears, and therefore no liability arose in respect of the year 2001, no liability arose until the end of January. I suppose a very punctilious employer would have rushed on the 1st February to buy his stamps but of course that only reflects in Government seeing the turnover of sale of stamps at the Post Office because nothing is returned. The fact that the existing law says that one must affix your stamps on a monthly basis, Government have no way of checking because the cards do not have to be returned until after the end of the year. What normally happens is that the Government see a steady sale of Social Insurance stamps at the Post Office but do not know whether people are just sticking these on cards or hoarding them in their safe. No one has been under an obligation to purchase any stamp under the old system certainly until after the end of January and then in respect of the month of January.

Mr Speaker, I would like to give the hon Member confirmation of this during the Committee Stage but my understanding is that the Government are just taking the view that when this legislation is in place people will just comply back to the beginning of the year given that compliance under the old regime does not mean that anything was sent to the Government. It simply means that stamps are bought from the Post Office so the Government are suffering some very temporary cash flow loss, or the fund is suffering some very temporary cash flow loss, resulting from the fact that no stamps have been sold during February and March. When this legislation is put in place that will be just taken up under the new system. I give way to the hon Member.

HON J J BOSSANO:

My query was not about whether they were buying stamps for the cards but the Chief Minister mentioned at the beginning that people, since the 1st January, have been able to go and make payments at the Tax Office. I was questioning how the Tax Office was able to collect these payments if in fact they require the authority of the law to do it. The other thing in relation to what happens at the turn of the year, I accept what is being said about the buying of stamps but of course the stamps theoretically have to be bought to affix to cards and the law requires that people have to change their cards in the first week of January. There used to be a Legal Notice that came out saying that and that was a legal requirement. Presumably that has not happened?

HON CHIEF MINISTER:

Mr Speaker, yes. The last part of what the hon Member has said has happened. People still have to exchange their last year's card. What we are saying is about this year's contribution. My understanding is that the Income Tax Office has not yet started collecting the cash. We are in the interregnum period and once this legislation is in place the new system will start to operate.

If I could then move on to the second point that the hon Member made about the heading at page 19 and new section 8. Of course, I am sure the hon Member will wish to extend his point to the other two or three places where the same point arises in the Bill. It arises, for example, again in the amendment on page 15 and it arises on the amendment on page 19 because this Bill amends several Ordinances all in the same way. Mr Speaker, I have not got the old Ordinance in front of me so I do not know what the heading of that..... but this is really the Regulation-making power which deals with many things that Regulations may be made for. The hon Member knows that the rate of Social

Insurance contributions and how much of it attaches to which of the various functions for which contributions are made through the stamp, that is already a matter of executive decision which does not require principal legislation. The other point is that the heading itself, even if misleading, I do not know whether that is the heading in the old Bill, certainly the heading is much narrower than all the things that can be done under it and I suppose the proof of the pudding is not just in the eating, not just in reading the section, the list, but also if the hon Member looks in section 8 it says ".....subject to the provisions of this Ordinance, Regulations may provide for any matters incidental to the payment and collection of contributions."

HON J J BOSSANO:

The point is that this seems to imply, on my reading of it that for assessing the liability, it is not about how the payment is made. It is assessing how many contributions have to be paid by a person. My understanding is that when we have regulations.....

HON CHIEF MINISTER:

No, no, I think the hon Member is misreading amount. "Amount" means amounts of money of, in other words the value of contributions.

The hon Member is reading this as if it read for assessing the number of contributions liable to be made by a person whereas I think the intention is for assessing. One does not assess the number of contributions, one assesses the monetary value of each contribution. I think that is what this is intended to look at but I will have the matter clarified before we take the matter at Committee Stage.

I will be moving one or two amendments, Mr Speaker, to this Bill. The alteration of the reference from "Governor" to "Minister" in section 54(4)..... If hon Members look at pages 13 and 14 they will see there at section 9(6) the list of sections in which the reference is changed from "Governor" to "Minister". Amongst that is section 51(4) which is the section that relates to the control of the fund itself. Of course, it was not the intention that the control of the fund should be changed from the Governor to the Minister. All funds are controlled by the Financial and Development Secretary and it is the Government's intention that that should be the case also with this fund so that I will be moving an amendment that in the case of amendment to section 51(4) only, (h) at the top of page 14, the amendment will read by substituting for the word "Governor" the words "Financial and Development Secretary". That will make the Social Security Funds consistent with what we did with the other Special Funds when we did the Open and Closed Long-Term Benefits Funds, that those funds and this would be under the administrative control of the Financial and Development Secretary. I shall be moving a consequential re-lettering of paragraphs consequential on that.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE SOCIAL SECURITY (INSURANCE) ORDINANCE (AMENDMENT) (NO.2) ORDINANCE 1999

HON CHIEF MINISTER:

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

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the purpose of the Bill is to facilitate the transfer of monies which are surplus to the requirements of the Short Term Benefits Fund to the Consolidated Fund or any other Special Fund. Similar provisions already exist in the Social Security (Open Long-Term Benefits Scheme) Ordinance and the Social Security (Closed Long-Term Benefits and Scheme) Ordinance. This amendment will bring the Social Security (Insurance) Ordinance in line with these and enable surplus monies to be transferred out of the Short Term Benefits Fund. Mr Speaker, this will bring the Short Term Benefits Fund not just into line with the Open Long-Term Benefits and the Closed Long-Term Benefits Fund but also the other Special Fund where it is possible to transfer monies from one fund to the other. Hon Members will be aware that large balances have built up on the Short Term Benefits Fund as a result of the failure to adjust the element of the stamp that contributes to that fund.

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 are opposed to this particularly in the light of the reference to large balances being built up on the fund. I think that if we were talking about a fund which exists to pay short term benefits which require relatively small outlays then obviously if there is too much money coming into the fund, then the Government can redistribute the revenue of the fund by altering the balances between the contribution breakdown. That is how it has been done in the past. When those provisions were put in the old funds they were put on the basis that we had a situation where those funds were intended to disappear. Since 1996, as far as I am concerned, the whole thing has been put to bed and it is difficult to envisage a situation where Social Insurance contributions by employers and employees should create surpluses which are not required for the purpose for which the money was provided and therefore can then become part of the general revenue of the Government and be used for anything else, converting the Social Insurance Fund basically into a tax in that context. People are paying for a benefit. We do have as a normal provision that when Special Funds outlive their purpose, the money that is left over can be used under the Public Finance (Control and Audit) Ordinance as part of the General Revenue of the Government because it is a fund that has ceased to have a use. When one has got a continuing fund paying benefits and receiving contributions, if there are funds surplus to requirements it is only because of the imbalance between the income and the expenditure of those funds and those surpluses can be eliminated by either giving more benefits or reducing the contributions. There is no need to transfer the money elsewhere. It is one thing that it may have been there historically and another thing to be thinking of actually making use of it.

HON CHIEF MINISTER:

Mr Speaker, I have to say that I am slightly surprised to hear the hon Member now extol the virtues of relieving employees of the burden when the fund no longer requires it. The surplus on this fund has built up precisely because during the years that the hon Member was in office, the fund collected nearly £1.5 million a year but paying out benefits of only a couple of hundred thousands. I regret that the hon Member did not have this policy at the time that he was in a position to do something about it when he could very easily have done what we have done which is to adjust the element of the stamp that is paid in this way and thus contribute to our ability to only increase Social Insurance contributions once in the five years that we have been in office as opposed to the hon Member who used to increase it systematically by 10 per cent in each of the seven out of the eight years that he was in office. Mr Speaker, we have taken the remedial action that the hon Member now recommends but did not see fit to implement himself at the time. Not only did he not take his own good advice at the

time, but indeed he used to annually increase the Social Insurance contributions, including the Short Term Benefits Fund contribution, notwithstanding that he was already collecting £1.5 million a year when the fund's expenditure was only two or three hundred thousand pounds. The hon Member will forgive me if I express surprise that he should now express the views that he expresses which at the very least are not consistent with what used to be his views when he was on this side of the House and I was on the other.

Mr Speaker, the other point that I would like to make to the hon Member is that these funds do not relate to the delivery of benefits. The Short Term Benefits Fund is a fund created under the Social Insurance Ordinance. That creates statutory benefits. Those statutory benefits are payable and would be paid by the Government even if the fund was zero. The Government would just have to fund it. It is politically inconceivable that any Government could turn round and say "you cannot have your unemployment benefit because there is no money left in the fund". Mr Speaker, this is the Short Term Benefits Fund, which deals with unemployment benefits, death grants, maternity grants. It is only those three things that are paid. This is not the Pensions Fund, this is the Short Term Benefits Fund which pays the remaining statutory benefits as opposed to the now much more common, thankfully, discretionary benefits under the Social Assistance Scheme. I cannot remember how much of it there is, a very significant surplus which could be used for other purposes and which in any case the balance of the fund does not determine the amount of benefits or the number of people that obtain benefits. Mr Speaker, since what the Government intend to do does not affect the receipt of their benefits by anybody, which are statutory and the Government have to be paid anyway, and secondly the Government have already done what the hon Member was recommending. If he looks at the current breakdown of the Social Insurance Fund I think he will find that the contribution to the Social Insurance (Short Term Benefits) Fund is just a few pennies. I have not got the exact amount in my head but it is a very small part of this fund and therefore this in effect amounts to a transfer of surplus funds to general reserves where they can be used for the payment of other social benefits which cannot be paid out of this statutory fund for reasons that the hon Member will understand and do not wish to discuss in such a public forum.

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

Question put. Agreed to.

THE LEGAL AID AND ASSISTANCE ORDINANCE (AMENDMENT) ORDINANCE 2001

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Legal Aid and Assistance 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 purpose of this Bill is to extend the current legal aid regime on appeals to the Privy Council. A recent case involving an appeal to the Privy Council has revealed that certainly in the case of civil appeals, legal assistance is not available as it is in the case of appeals to the Court of Appeal. The Privy Council, of course, is although situated in the United Kingdom, an integral part of the appellate Court structure in Gibraltar and the Government do not consider that it is appropriate that those on legal aid and otherwise without the means to pursue an appeal should be denied legal aid in the case of appeals to the highest court in the land. There is also the not inconsequential question of whether the fact that there is no legal aid available on appeal to the Privy Council may be a breach of the European Convention of Human Rights which, in the case of difficult and complex cases, says that the absence from legal aid and assistance is a denial of access to the courts. The Convention does not say that but that is the interpretation that the European Court of Human Rights has placed on a provision of the European Convention of Human Rights and therefore what this Bill achieves is to extend legal aid to appeals to the judicial committee of the Privy Council. I commend the Bill to the House.

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

HON J J BOSSANO:

Mr Speaker, we will support the Bill on the basis of the explanation that has been given that people should not be denied the opportunity. If in the first instance they merit legal aid then lack of money should not be what prevents them from getting justice. I do not think there is an argument against that.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE COMPANIES (EXECUTION OF DOCUMENTS BY FOREIGN COMPANIES) ORDINANCE 2000.

HON K AZOPARDI:

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

Question put. Agreed to.

SECOND READING

HON K AZOPARDI:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this is a short Bill. The background to this Bill is that the Companies (Amendment) Ordinance 1999 was given effect on the 1st January 2000. That Ordinance introduced provisions relating to the abolition of corporate seals for companies incorporated in Gibraltar and companies incorporated outside Gibraltar. As a result of that the execution of documents by companies incorporated in Gibraltar and outside Gibraltar was facilitated. The effect of this Bill is to give retrospective effect to the provisions of the Ordinance relating to execution of documents by foreign companies. Additionally, by way of background Mr Speaker, many foreign jurisdictions do not recognise the concept of a corporate seal and the validity of documents executed by foreign companies without a corporate seal prior to the giving of effect to the Ordinance will be by virtue of these provisions and for the avoidance of doubt deemed conclusive as a result of these provisions. Therefore, this Bill is intended to give retrospective effect to the provisions introduced by the 1999 Ordinance abolishing the requirements to have a corporate seal for foreign companies in respect of all the deeds, instruments and other documents executed by foreign companies during the period of six years prior to the 1st January 2001 as is laid down in the amendment to section 31(9). Any documents executed during that period will be deemed to have been validly executed provided that they were executed in the manner provided in the amendment that we are moving to the Companies Ordinance in the form of this Bill. It is a minor but necessary Bill. I commend the Bill to the House.

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

HON DR J J GARCIA:

Mr Speaker, there are a number of questions which the Opposition would like clarification on in relation to this Bill. Although the amendment might itself be a small one and although what it does is quite clear, there are a number of issues where we would like some clarification from the Government. The first issue would be that this Bill as the Minister says quite correctly was the result of an amendment to section 31 that was carried out in 1999 and which was subsequently enacted by this House with eight sections and this actually establishes nine sections which seek to clarify the position which the Minister has already explained. What we do not have clear is first of all whether anything happened between the original Ordinance that we are now amending to-date and which has given rise to the need for this extra clarification by adding a new section 9. Secondly, Mr Speaker, it is also not very clear why the cut-off points have been the question of six years. Why is it that it has given retrospective effect but only in respect of the last six years? Is there a specific reason for that which certainly we are not aware? I will give way to the hon Member if he would like to answer those points because there are two issues that we wanted to raise.

HON K AZOPARDI:

Mr Speaker, to answer the hon Member's question on the clarification at this stage, I think both issues are tied in with each other as it were. What happened apparently was that the Gibraltar Ordinance has always been, I am advised, silent on the issue of foreign companies and corporate seals. We provided that there should be corporate seals in relation to Gibraltar companies but in respect of foreign companies it has been silent. The position taken historically as far as I am aware and certainly practised by a number of lawyers in Gibraltar has been that to decide how foreign companies execute deeds and documents in Gibraltar one has to go to the country of incorporation of that company and see what rules govern the execution of documents by that company at its registered seat as it were. The amendment made in 1999 apparently was an amendment on the basis of avoidance of doubt. The Government, when it moved the amendment in 1999, did not feel that we needed to, but we always felt that one had to look at the seat of the foreign company to decide what rules govern it but we thought that for the

avoidance of doubt it was better to express the point that one should go to that company's seat, not because we as a Government felt that there was any great need to do so but perhaps because there seemed to be, at the time we were being told, some doubt in the industry. The further background that may help the hon Member is that indeed there seems to be conflicting advice even though I personally feel that that has always historically been the case and we have always had to analyse where the foreign company has been incorporated to see what rules govern the execution of documents. I am told that as a result of the restructure of one of the banks in Gibraltar that ceased to be a Gibraltar-incorporated entity but rather became a branch of a Dutch entity, lawyers acting for other banks in Gibraltar were giving their client banks were that the position was not clear in respect to the execution of documents by a foreign company and indeed that the position had not been made retrospective and so therefore even though the position had been clarified back in 1999 that because it had not been made retrospective there were whole series of transactions which were being held up, kept in abeyance or not proceeded with as a result of the lack of retrospection. The Government felt that it was appropriate, given that we have always felt, in any event, that we should go to the company of incorporation to see what rules govern the execution of documents, and no negative issue will arise as a consequence of this Bill to come to the House with a clarification of the position. I understand that there are two banks in Gibraltar that are not really doing transactions as a result of their lack of clarity even though there has been counsel's opinion taken in London as to the extent of the situation in Gibraltar and indeed confirming the position that they should go to the country of incorporation for the rules. The cut-off point is all tied up with the restructure of that Gibraltar entity. I understand that it is all related to that transaction and I am told that the cut-off point of six years also is taken generally as a good time for there to be a cut-off and rolled up with that initial query as to the extent of the retrospection and the extent that this Bill has had an impact on Gibraltar law. I hope that is useful clarification.

HON DR J J GARCIA:

Mr Speaker, I am grateful to the Minister for that reply. We take it then that the reason for the six years is linked to the question of the Dutch bank, a one-off case.

HON K AZOPARDI:

It is six years retrospection but not a one-off. Everyone who falls into that net, but I am told that it is generally aimed at this situation.

Question put. Agreed to.

The Bill was read a second time.

HON K AZOPARDI:

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

Question put. Agreed to.

THE COMPANIES (AMENDMENT) ORDINANCE 2000.

HON K AZOPARDI:

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

Question put. Agreed to.

SECOND READING

HON K AZOPARDI:

I have the honour to move that the Bill be now read a second time. Again, Mr Speaker, a short Bill providing desirable amendments to the Companies Ordinance. The background to this is that at present a company may only be struck off the Register after lengthy and protracted proceedings, sometimes expensive procedures of notification to all interested parties. This, obviously, is correct in the case of existing companies which are active but there are many companies in the Register which are effectively dead and have been so for many years. The Bill proposes a more simplified method of striking such dead companies off the Register. Any company which has not filed an Annual Return since the 1st January 1993 may be struck off, after the Registrar of Companies has notified his intention to do so after publication in the Gazette. If, within three months of publication, no representations have been made to the contrary, the company is struck off. This will provide a simpler and more effective and inexpensive method of getting rid of the dead companies. Hon Members of course are aware of all that speculation and allegations that are made, we have spoken about this before in the House in Question and Answer sessions, about the number of registered companies in Gibraltar and we always say that we like to talk about the number of active companies because it just gives food for those who want to criticise Gibraltar to do so unjustifiably. Hopefully, this Bill will be able to clarify the position substantially by removing all those dead companies. If the hon Member wants to have an idea of how many companies we envisage can be tackled through this, we do not have a specific figure but Companies House say to me that it will go into the thousands given that they make their own assessment that we have about 29,000 active companies in Gibraltar. The hon Member will be able to gauge from that against the number of the last registered number that there are thousands of companies that will be dealt with expeditiously on this basis.

I commend the Bill to the House.

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

HON DR J J GARCIA:

Mr Speaker, there are again a couple of areas where we would like clarification in relation to this particular Bill. The Minister has mentioned, and the Explanatory Memorandum of the Bill also mentions, that this applies to companies which have not filed Annual Accounts since before the 1st January 1993 which implies the period leading up to 1993 but not the period 1993 to date. The actual Bill in its text instead of mentioning before 1993, which is what the Minister says, and what the Explanatory Memorandum says, refers only to companies in default since the 1st January 1993 which implies from 1993 to date and not the period before 1993. That is one area we would like the Minister to clarify. The second point will be in relation to the use of 1993, is there a particular significance which the Opposition has not been able to establish in relation to that particular date?

HON K AZOPARDI:

I thought that I had said that it was intended to put in place a procedure that if one has not filed an Annual Return since 1993 one can commence a striking off procedure. That is what the Bill is intended to do and indeed on the face of it does do that under section 267A(1) it makes clear that if one has not filed an Annual Return since the 1st January 1993 one can commence that process. I think that is consistent with the intention of the Government and it is reflected in that. Why that date was arrived at, I think it was in discussions between Companies House and the LSU and it was arrived at because that is the date that the Companies House (Gibraltar) Ltd took over the administration and then can speak for the administration of those companies quite clearly. They did not want to give undertakings or commence procedures that they had not administered themselves. For additional clarification I now understand that the hon Member will be interested that it may even affect about 20,000 companies.

HON DR J J GARCIA:

I am grateful to the Minister for the reply. It was only that it seemed to the Opposition that the position as explained in the Explanatory Memorandum and the position as explained in the Bill were two different positions. We now understand what it is that the Bill purports to do.

HON J J BOSSANO:

Can I ask to what degree is this going to speed up the process? What precisely is it that the provisions dealing with companies in default, which can already be removed but presumably take longer, how exactly is it that this speeds it up? I notice that there is the avoidance of having to put certain notices. Can we have an indication from the Minister how in practice this cuts down the period within which it will be possible to deregister a company? It is correct that they can already be deregistered, I take it, if they are not making Annual Returns?

HON K AZOPARDI:

Mr Speaker, I do not have the particular provisions in front of me but from memory the procedure is more lengthy. One has to give more notices, more time period has had to elapse and one has to give individual notices. I understand what is intended is to have some sort of collective notices drafted to enable the speeding up of the process substantially. Under the current procedure I understand one would have to write to individual companies giving them notice and then one would expect a response from them. All of that tends to delay the process substantially. Mr Speaker, just looking at section 267(1) of the current Ordinance it says "where the Registrar has reasonable cause to believe that a company is not carrying on the business or an operation he may send to the company by post a letter enquiring whether the company is carrying on the business or an operation....". Of course, that links in this concept of reasonable cause which I understand the Registrar is having difficulty with when addressing his mind as to what company should be struck off the Register. Then what follows in the current Ordinance is a description of the procedure which, if the hon Members care to put side by side with these current provisions, they will satisfy themselves that this is indeed a simplification of the latter, I would be happy to discuss it in greater detail at Committee Stage.

Question put. Agreed to.

The Bill was read a second time.

HON K AZOPARDI:

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

Question put. Agreed to.

THE ELECTRONIC COMMERCE ORDINANCE 2000

HON K AZOPARDI:

I have the honour to move that a Bill for an Ordinance to facilitate the use of electronic means to transmit and store information, to provide for agreements concluded by electronic means to be binding, and to provide the framework within which electronic service providers operate, be read a first time.
Question put. Agreed to.

SECOND READING

HON K AZOPARDI:

I have the honour to move that the Bill be now read a second time. Mr Speaker, we have discussed during the Question and Answer Session the progress of this Bill from time to time. The

Government have intended to bring e-Commerce legislation to this House for a few months. Indeed, this is the Bill that seeks to do so. Just to give a description to hon Members of the different parts of the Bill, because it is an extensive document, it seeks to implement two EC directives - the Electronic Commerce Directive which was passed by the Commission in June last year and the Electronic Signatures Directive. The Bill is divided into four parts. The first part deals essentially with contracts concluded by electronic means, that is, either the internet or by e-mail or such other electronic communications as may be designed. Basic standards for service providers are laid down for the protection of consumers. Clear and accessible information must be provided in each step concluding an electronic contract by service providers established in Gibraltar. An important point to note is that all seven provide that Gibraltar law apply to any contract entered into through a service provider established in Gibraltar. The Minister is also given powers to set out approved codes of conduct established by service providers in the industry in relation to their services. Part 1 really capsulates the transposition of the E-Commerce Directive.

Part 2 is the transposition of the Electronic Signatures Directive. We wanted to split it up because they are really different directives. One is much more technical than the other. It provides that electronic signatures will be just as valid as handwritten signatures specially supported by an accreditation certificate provided by a certification service provider. Such providers are third party who guarantee the authenticity of the electronic signature to the comfort of both consumer and supplier. Although there is no requirement for a certification service provider to be approved, it is proposed that there is power in the Bill so that the Minister can prescribe certain standards to be met to achieve approval of those certification service providers. Obviously, certification service providers will be liable in certain circumstances to any third party to suffer loss as a result of relying on the certificate but that is no different to the non-electronic world.

Part 3 of the Bill deals with the effect of electronic transactions. Again that really are provisions stemming from E-Commerce Directive and they provide that rules of evidence in relation to paper documents will be equally satisfied by a document in electronic form if there is no question about the integrity of the document.

Part 4 provides for miscellaneous matters such as regulation-making powers and power of the Government to require service providers to remove any material which may be against public policy. I should add that a consultative paper was issued back in July last year. Comments were received by a whole variety of individuals and representative organisations. Many of them have been incorporated into this Bill. The Bill has also met the general broad support of those who have made representations to Government with those constructive suggestions and I take the opportunity of thanking them for those constructive suggestions made at the time. The industry is keen that this Bill should go forward at the earliest opportunity. The earliest opportunity has been today because of the fact that the Bill was published after it was finalised when the consultative comments were taken into account and this is the first opportunity we have had to take this to the House. I commend the Bill to the House.

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

HON DR J J GARCIA:

Mr Speaker, in relation to this particular Bill there are certainly a number of areas where the Opposition would like to seek clarification and explanation from the Government. We were not sure when we received the Bill whether this is actually the transposition of European Community Directives or not because it is not mentioned in the Bill itself. Is this a requirement of both the Electronic Commerce Directive and the Electronic Signatures Directive that this should be the case. Having now heard that it is the case and that we are implementing two directives in this particular Bill there are a number of issues which arise from that which we would welcome clarification from the Minister.

The first of these relates to the question of the general framework within which the directives have been drafted and implemented in the European Union Parliament. The E-Commerce Directive refers to a framework of privacy and data protection and mentions a series of other directives within which these two are to be read or to be implementated and taken. We are not sure what the position is in Gibraltar in relation to data protection and in relation to privacy and it is certainly an area we would welcome the views of the Government in relation to what the actual position is. Mr Speaker, we also note the discrepancies which arise in relation to the question of the Code of Conduct of the service providers and also certification of service providers. The Minister has indeed mentioned that there is no requirement to approve them under the directive but that we are going to require that approval anyway in Gibraltar. What we do not know is the reason why that particular view has been taken by the Government in relation to this.

Mr Speaker, there are a number of other issues which arise and in the question of the code of conduct, for example, the preamble to the directive leaves it quite clear that Member States and the Commission are to encourage the drawing up of codes of conduct. This is not to impair the voluntary nature of such codes and the possibility for interested parties to decide freely whether to adhere to such codes. On that particular one it seems pretty clear first of all in relation to the intention when establishing, drawing up the directive in the preamble, and secondly in the actual directive itself, which again speaks of the voluntary nature of these particular Codes. We would be happy to hear from the Minister why it is that the Government have taken a different position on this from that laid out in the directive that applies to the certification service providers and it also applies to the ISP? In the actual directive itself it mentions and goes into these particular issues and on the question of prior authorisation it says "....the Member State shall ensure that in taking up on pursuits of the activity of, an information service provider may not be made subject to prior authorisation or any other requirements having equivalent effect." I think that applies in both cases so we would be very grateful to know from the Minister why it is that the Government have felt it necessary to make these changes from the directive to the Bill with regard to its transposition in Gibraltar?

Mr Speaker, we know that there are a number of points which are mentioned in the directive which are not mentioned in the Bill or at least which the Opposition have not been able to establish regarding the question, for example, of opt-out registers of regulated professions and also we note that where as the directive refers to the courts or an administrative authority in relation to areas where there may be illegal activity or where investigations are required the Bill gives those powers to the Minister. In Article 14 it mentions that this Article should not affect the possibility for the courts or administrative authority in accordance with Member States' legal system requiring the service provider to terminate or prevent an infringement nor does it affect the possibility of Member States establishing procedures governing the removal or disabling of access to information. The references to courts and administrative authority in the directive are powers which are given to the Minister in Gibraltar. Whereas in some cases, if one goes through the Bill, one finds that they might be made in the sense that it is practical to do so, in others it does not seem to us why the reason for that is. For example, in section 8(3) of the Bill an intermediary service provider of which I understand there are two in Gibraltar is not required to monitor communications using the service to discover whether any communication may give rise to civil or criminal liability. The intermediary service provider shall, however, comply with any directions given by the Minister or the Courts and with its contractual obligations in respect of any communications using the service. The directive mentions the administrative authorities or Courts and that is one example. There is another area where the procedure for dealing with unlawful or defamatory information which may be posted on the internet or which may be available for people to access and the removal of that information, that is to say where the intermediary service provider of which there are two in Gibraltar under section 9(b) of the Ordinance is required to notify the Minister of the relevant facts and if he knows it the identity of the person for whom he was supplying services in respect of this information. Mr Speaker, the Isle of Man Act on

which part of the Gibraltar Bill is based according to the information circulated in May, refers to a responsible authority and perhaps it is relevant to wonder why the person should not go to notify the Police instead of notifying the Minister in the light of civil or criminal activity.

The question of the codes of conduct is something which we have already gone into but in Article 19 of the E-Commerce Directive there is reference to co-operation between different European Union Member States and jurisdictions and it says that the Member State shall co-operate with other Member States and shall to that end appoint one or several contact points whose details he shall communicate to the other Member States and to the Commission. There is certainly to our knowledge, having looked at the Bill, no appointment of any contact point for Gibraltar in relation to the requirement of Article 19 of the European Union Directive. That is another area where we would welcome clarification from the Minister and an explanation as to why that should be the case.

Moving to the Electronic Signatures Directive, Mr Speaker, the approval for accreditation certificates of the people who wish the certificate which the Minister very rightly pointed out in his address, is something which is peculiar to the law here but it is not to the European Union Directive. It is something which the Isle of Man requires, registration of these CSPs but certainly it is not a requirement of the directive and the Isle of Man is not in the European Union. In relation to that for the purpose of clarification it is in section 10 of the preamble which mentions that certification service providers should be free to provide their services without prior authorisation. Prior authorisation, it says, means not only any permission whereby the certification service provider concerned has to obtain a decision by national authorities before being allowed to provide a certification service but also any other measure having the same effect. One is the question of approval and permission and the other is the question of the accreditation schemes which according to the directive should also be voluntary. For example, there are other areas where people think that there may be some criminal activity and can report that to the police. One such is in section 16(2) but there are others where instead of mentioning the police it mentions the Minister and we are just wondering whether the Minister could clarify that position.

There is also, in Article 11 of the directive, a requirement to notify the European Commission as to the voluntary or accreditation schemes which are set up with names and addresses of the bodies responsible for accrediting them and the names and addresses of all the certificate providers et cetera. All that section is something which we do not see reflected. The European Union elements of the directive we do not see reflected in the Bill before the House today.

There is also a requirement, when they issue certificates and we note that the directive makes a distinction between qualified certificates, when they issue the qualified certificates one of the key elements in it is that the certificate must contain the name of the state in which the certification issuer is established. It would be relevant to us to know, given that we are transposing this European Union law what that particular state will be and what the reference in the certificate issued will be.

Mr Speaker, there is in the Order Paper an amendment to this, but I leave that until the Minister introduces the amendment in Committee Stage. Those are the areas in which we would like clarification and we would welcome the reasons why the Government have decided to transpose these two directives in that particular way.

HON K AZOPARDI:

Mr Speaker, a whole variety of points there. I will try to deal with all of them. I can certainly confirm to the hon Member that the intention is to transpose those two directives - the Electronic Commerce Directive and the Electronic Signatures. I am not sure if the hon Member wants confirmation or he took my Second Reading speech as confirmation, but if he wanted it there it is for what it is worth.

HON DR J J GARCIA:

Would the Minister give way? The point was that the directives mentioned that if one is in effect transposing a directive in the law and the law actually does not mention that.....

HON K AZOPARDI:

Mr Speaker, I am not sure if the Legislation Support Unit either spotted that or take the view that it is necessary. The fact of the matter is we seek to transpose the directives here by virtue of the broad Bill that we have put forward. The point is also that the hon Member needs to be aware of the context of this transposition and of this Bill. When we were re-elected and I was assigned to this post in February last year and I arrived into office there had already been substantial work done of the drafting of E-Commerce legislation. At the time there was no directive drafted or agreed by the European Commission and the legislation that had been drafted by my predecessor with the LSU was essentially based on Bermuda, the Isle of Man and other models that they had sought to find around the world. There was general agreement, though, that if a European model was agreed then clearly we should fall under that umbrella rather than other legislation clearly because our EU membership would require us to comply with those key principles once they were agreed by the European Commission. That came in June when the legislation was fairly advanced but it gave us an opportunity to review both structure and content of that. Hon Members will also have to take into account that this is not an area, given that there has been approval of the directive by the Commission in June and Member States were given until the 1st January 2002 to transpose this framework into national legislation, that there are not many models floating about neither is this a tried and tested area of law and, quite clearly, we could either take the view of waiting and seeing what models would emerge around Europe or take the view that we take the plunge and in the full expectation that the Courts in the UK, Ireland or Gibraltar will construe provisions in different forms and that amendments will be required in due course to this legislation but we do not want to lose the possibility of business coming to Gibraltar so we take the plunge in the full expectation that at some stage I assume that amendments will be required to this legislation. But it is important for us to act vigorously so that we do not lose business. For example, the UK has not, to my knowledge, passed legislation in this field. I am aware that it has issued a Consultative Paper on the directive but I am not aware that they have actually taken legislation or enacted it yet. It is in that general context that the hon Member should read this Bill. It is a Bill that has gone through consultative process in Gibraltar, where the general feeling of the industry is positive. The industry is saying to the Government "take it forward even if there are holes in the legislation, take it forward because it is important for us to attract business to Gibraltar". In the context, as I say to the hon Member that I expect at some stage to have to come back with amending legislation if there are any gaps. If there are gaps that are identified that we can deal with today I am happy to do so in that context.

I will also make the point generally that the way that the legislation drafters took the directive is that it provides a framework of general standards and principles that need to be incorporated into national legislation but they advise me in many circumstances they are indicators that they do not provide a specific answer and that the Legislation Support Unit had to draft provisions around a general principle without, in many cases, the assistance of having a specific English or Irish model that they could say had already transposed and complied with these circumstances. What they therefore did was see if there were pieces of legislation around the world, we were already using Bermuda, Isle of Man and others to see whether sections that had been drafted around the world and were already in place were inconsonance with certain principles and if they were inconsonance with those European principles would they suffice for us in Gibraltar.

In relation to the specific point that the hon Member makes, as to codes of conduct, I am not sure that I agree with him that we are trying to do something different to what is provided under the directive. If the hon Member wants at Committee Stage to clarify specifically why he thinks so I would be happy to look at that but

our intention generally was to reflect the provision in Article 16 in this Bill, in both sections 10 and 18. It is not compulsory on the Minister to approve codes of conduct but it really gives towards encouraging essentially the representative organisations to get together, draft codes of conduct and submit them to the Government for approval. We thought that was the thrust of Article 16. If there is any specific aspect where the hon Member feels the Bill can be improved on I would be happy to look at it at Committee Stage. For background, I would say that through the think tank that I convened I have already set up a sub-committee made up of the Federation of Small Businesses, the Chamber of Commerce, the Legislation Unit and the DTI, to see whether we can progress by agreement, some codes of conduct that can be presented eventually and adopted by the industry and the Government essentially by mutual consensus.

Mr Speaker, the hon Member says that there is not a provision that deals with co-operation to reflect Article 19. I think the hon Member is correct in that. If he has a suggestion or a specific amendment to make at Committee Stage I would be happy to consider that to see if we can proceed by agreement on that matter. In relation to Article 14 as to administrative authority or where the powers are vested for notification of crime, the view is taken by those who drafted this legislation that we should vest the powers in the Minister because the directive gives an option of court of administrative authority and it was felt that the Government was a sufficient authority to receive notification and clearly if it gives rise to criminal liability the Minister will pass it on to the Attorney-General for action. There is not going to be an issue there. The point was not precisely, in my view, who should receive it but rather to have a mechanism by which we can crack down on cyber crime. That is the whole point. Indeed I have written to the Attorney-General about this matter the other day because the hon Member will have seen in the BBC Panorama programme on cracking down on child pornography rings which actually is specifically an area where the Government feel quite strongly there should be power vested in the Government to be able to direct, if they receive information, ISPs or any other service provider that is being used as an unwilling channel for this type of information to remove it in the public interest. I am sure the hon Member will share that concern.

HON DR J J GARCIA:

The point we are trying to establish is, would it not perhaps make more sense for the ISP to report illegal activity to the Police rather than to report it to the Minister?

HON K AZOPARDI:

Yes but the whole point was 'administrative authority' is not defined. This is not only reporting criminal liability, it is about civil liability as well. One has to look at that context of the Bill where it will have hopefully approved Codes of Conduct generally for the industry once this sub-committee gets working and agrees something. We thought that it would be more convenient to deal with this matter that way. We will set up internal processes so that we ensure that if we receive criminal liability they will go to the ultimate venue which is the Attorney-General's Chambers. That was the essence and spirit of the rule. There is nothing I hope that should concern the hon Member.

On accreditation certificates, Mr Speaker, I understood the hon Member to say that he was not sure why we needed to register them. That was the interpretation that the Legislation Unit placed on Article 3(1) of the directive. In Article 3(1) it talks about the provision of certification services not being available subject to prior authorisation. That, together with the rest of the provisions, was interpreted.....

HON DR J J GARCIA:

Would the hon Member give way? What Article 1 actually says is "that Member States shall not make the provision of certification services subject to prior authorisation." It seems to us that is exactly what we are doing in this Bill.

HON K AZOPARDI:

Where is the hon Member reading from?

HON DR J J GARCIA:

Directive 1999/93, Article 3(1), Market Access.

HON K AZOPARDI:

I will have to clarify that with the LSU but the view they took of the transposition methodology is that there should be some mechanism for registration but that that did not infringe this provision. If the hon Member is not satisfied with that perhaps it can be clarified later. I will take a note of that and I shall clarify that for him which is the outstanding point on this.

On notification, Article 11 does not need to be provided for in this Bill and rather it would seem that administrative notification of transposition that would take place in the normal course of things I think other directives provide for that as well. There is no need to say specifically in ones national legislation how that is dealt with. The issue of the form that the certificates will take and what will be the name of the issuing party, that is not something that we have directed too much thinking to at the moment. We have been trying to concentrate on getting this Bill through. It may be that it forms part of the Codes of Conduct. Certainly, internally, once the Bill is through we should give some thought to that and obviously we will be conscious of the need to protect separate identity et cetera. I hope that deals with all those points, Mr Speaker.

HON J J BOSSANO:

When the Minister told us that this was implementing the EU Directive he indicated that failure to refer to implementation might be the result of the ELU interpreting these directives differently in the sense that they were sort of frameworks or guidelines as opposed to what we are used to. In fact, the provisions in the directive on implementation say that when the Member States adopt the measures they shall contain a reference to this directive or shall be accompanied by such a reference on the occasion of their official publication. That is precisely the identical words that we find in the final article in every other directive that we have implemented. The normal thing has been that the Bill for an Ordinance brought to the House should actually identify the directive by number and that we should then be given a copy of that directive so that we can see the transposition taking place. Therefore, if we look at the Bill on pollution before this House, it says to implement in Gibraltar the provisions of directive 96/61 but we would have expected a similar provision in this law. This is why we question it. We realise that the deadline has not been reached. In one case it is July 2001 and in the other case it is 2002. It is not that failure to implement at this stage means anything because there is nothing to stop whatever is not implemented now being implemented later. But we got the impression from the original statement that the Government's view was that this was giving effect to these directives and we would like to know whether this is an omission or a change of approach because, frankly, it is important to know before we come to the House whether it is local legislation which is Gibraltar Government policy or an EU obligation which we are giving effect to.

HON K AZOPARDI:

Mr Speaker, I do not have a copy of the original Bill but because of the description I gave the hon Members about how this thing started and how legislation was drafted prior to the directive being agreed, that the Explanatory Memorandum obviously had to be replaced and dropped out because once the redrafting process started, once the Commission Directive was agreed..... I agree that that provision is in the directive and I think the difference is that of all the Bills we have taken to the House this is the only one that does not have an Explanatory Memorandum. Obviously it is an omission. I do not think there is anything deliberate because the whole point of the Article 13 reference to Member States when they officially publish something they should say that they

are going to transpose European legislation is for public information. No one, surely, can have failed to notice that the Government have been for now some months saying that they intended to put in place legislation on e-Commerce which will specifically transpose also the European Directive. We have said so several times. I think the general spirit of this has been met, if we have not said it before. It was certainly said also in the consultative document that we issued that we intended to transpose that and that on electronic signatures. I think the public information point has been met though of course technically the hon Member is correct that on official publication of the Green Paper it did not carry a reference but that, together with the public information we have issued previously and the public information we have issued throughout the consultative process and today I think surely clarifies for everyone in Gibraltar what the position is.

HON DR J J GARCIA:

Mr Speaker, there is one point which I mentioned which I do not think has been covered and that relates to the question of the framework of data protection and privacy covered by other European Union Directives of which these two are expected to form a part. According to the preamble to this directive this framework is already established in the field of data protection and therefore it is not necessary to cover it in these two. What is the position in Gibraltar in relation to that?

HON K AZOPARDI:

The position there is that there were some comments received during the consultative process that made that point, is this Bill going to guarantee, for example, privacy of e-mail? The answer is, it is not in this Bill. The intention of Government when they received those comments at the consultative process was to, through the Legislation Unit, make the appropriate alterations to data protection legislation that is under preparation specifically in relation to telecommunications so that we can provide for privacy of electronic communications at that point. It is obviously a matter of some debate to what degree privacy should be affected in relation to electronic communications. The United Kingdom have enacted their Regulatory Investigative Powers Bill, a so-called RIP legislation. I am not sure it means RIP because it is going to kill e-Commerce in the United Kingdom, it may be the case, that is the view that some people take certainly. The view of the Government here is that obviously we can safeguard privacy as much as possible within the limits of the law as long as no illegal activity is being contemplated. But certainly the thrust of the privacy comments, the data protection comments, that were put through to the Government by entities and individuals at consultative stage were passed through on the basis that we indicated that we accepted that we needed to provide written legislation but that the proper time for it was in the data protection legislation which we hope to present to the House in due course.

Question put. Agreed to.

The Bill was read a second time.

HON K AZOPARDI:

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

Question put. Agreed to.

THE SOCIAL SECURITY (CLOSED LONG-TERM BENEFITS AND SCHEME) ORDINANCE 1996 (AMENDMENT) ORDINANCE 2000.

HON MRS Y DEL AGUA:

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

Question put. Agreed to.

SECOND READING

HON MRS Y DEL AGUA:

I have the honour to move that the Bill be now read a second time. Mr Speaker, on the 5th January 1998 the Social Security (Closed Long-Term Benefits and Scheme) Ordinance was amended to provide a further opportunity to pay arrears of social insurance contributions to those persons who were eligible to pay arrears on the 5th January 1975 but did not elect to do so at the time. The closing date for the payment of these arrears was the 5th April 1998. In order to accommodate several persons who submitted their applications after this date, the Ordinance was subsequently amended to extend the closing date until the 31st August 1998. There are still some people who, for various reasons, missed the second chance to pay the arrears in 1998 and the purpose of this Bill is simply to provide yet another opportunity to this group of people. It should be noted that this selection will apply to all those persons who have an incomplete contribution record in respect of periods of actual employment in Gibraltar at a time that they were exempted or prohibited by law from contributing to the Social Insurance Pension Scheme either because they earned more than £500 earning ceiling or because they were self-employed. As in 1998 this option will also be extended to the widows and widowers of any insured person who was eligible on the 6th January 1975 but is now deceased and for those persons who at the time may have opted to pay arrears by instalments but were unable to complete all the payments.

Mr Speaker, in view of the lapse of time since the publication of the Bill, I beg to give notice that I will be moving amendments to the Bill at Committee Stage to replace in the title the year 2000 with the year 2001 and extend the time limit in which such an election can be made until the 30th June 2001. I commend the Bill to the House.

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

HON J L BALDACHINO:

Speaking on the general principles and merits of the Bill, I am grateful that the Minister has just said that there will be an extension to the time that persons may apply because to us it appeared to be too short a period from passing the Bill to the closing date. I do not know the number of people that may be affected by not contributing before for various reasons but I think that the time limit was a bit short and I am grateful that the Minister at this stage has given an extension. Nevertheless, Mr Speaker, there are other arguments which have been put in this House before by the late hon Colleague Robert Mor and I will have to go into that one as well because the Minister has not mentioned that and that is that he used to raise in this House that there should be a change of the date of the 6th January 1975. At the time, Government said that this could carry a risk of challenge from outside Gibraltar but they did not rule out the decision that in the future they could actually be looking at the date and obviously they would need legal advice on this. Seeing that the Minister is still keeping to the original date one of the arguments was that they kept to the 1975 date because prior to all the Bills being passed that was the date and therefore having not received a challenge there they needed legal advice if it was possible to move from the 1975 dates. We believe there is no such risk if the Government were to move from that date. Nevertheless, seeing that they have not moved we are enquiring whether the Government have had legal advice and, if so, what was the advice that they have had for moving from the 1975 date. If no such advice has been sought what is the reason that the Government give for not moving from the 1975 date?

HON CHIEF MINISTER:

On the question of extending the time to 30th June has been explained by the Minister for Social Affairs in her own address, although I am not sure that it is actually necessary to do so this is not a question of trawling now as most of the cases are waiting to be processed and these are people that have approached the Department since the last closing date and they have been told

"sorry, it is too late, you missed the window." So theoretically the window will only need to be reopened for one day to allow them to be let in. There may be others that emerge when publicity is given to this but in principle the people for whose benefit this is being done are probably already identified and their applications are already in the Department and it is just a question of facilitating it. There is no reason why it should not be opened for three months as indeed was the intention when this Bill was published in November we had hoped to take it sooner and the Bill contained the date 31st March. The Government always intended that there would be a period of time even if it was not necessary.

The purpose of this Bill is to give a further opportunity to the people who have already had it. For that reason the Government will not support any amendment that the Opposition may wish to bring to alter the date of the 6th January 1975. That date has been chosen for reasons which the Government continue to believe is important to maintain and therefore the question that the hon Member raises does not arise on the consideration of the Government's Bill which is intended to give a further opportunity to the same category of persons that have had them once before and twice since this Government have been in office.

HON J J BOSSANO:

Effectively, what we are being told is that the group that was given the opportunity on the first occasion is the same group that was given the opportunity on the other occasions and it is not an amendment to enlarge the group of eligible persons but simply more opportunities for those who missed the boat each time. But of course when we first raised the question of the group the Government could not give us a clear explanation for the selection of the date except that there appeared to be historical reasons for it and possibly that the reluctance to move away from that date might be an indication of a suspicion, a fear, that moving away from the date might open an unwelcome door. But they agreed to look into it and this was something that they agreed to do the first time round. They said that they were not sure. We accepted that we were not asking them to open doors that we do not want opened but of course quite a long time has gone by since that indication was given that the matter would be looked into and consequently what my hon Colleague was asking in his original contribution was have we now got a feedback to say we are sticking to the original position because the matter has been investigated fully and we have come to the conclusion that there are dangers or obstacles or problems which we were not able to say what they were the first time. But there is no evidence of that and therefore we are not going to be moving an amendment but obviously on every occasion that they keep on bringing windows we will keep on raising the point in the hope of being able to persuade them.

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 later today.

Question put. Agreed to.

House recessed at 12.30pm.

House resumed at 12.35pm.

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 Piracy Act 1837 (Amendment) Bill 2001.

(2) The Social Security (Miscellaneous Provisions) Bill 2001.

(3) The Social Security (Insurance) Ordinance (Amendment)(No.2) Bill 1999.

(4) The Legal Aid and Assistance Ordinance (Amendment) Bill 2001.

(5) The Companies (Execution of Documents by Foreign Companies) Bill 2000.

(6) The Companies (Amendment) Bill 2000.

(7) The Electronic Commerce Bill 2000.

(8) The Social Security (Closed Long-Term Benefits and Scheme) Ordinance 1996 (Amendment) Bill 2000.

THE PIRACY ACT 1837 (AMENDMENT) BILL 2001

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

THE SOCIAL SECURITY (MISCELLANEOUS PROVISIONS) BILL 2001

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

Clause 2

HON CHIEF MINISTER:

Mr Chairman, I beg to move an amendment as I indicated during the Second Reading. The amendment is that clause 2(6)(h) be deleted. That Section 51(4) be removed from the list of sections in the principal Ordinance in which the reference to "Governor" is going to be changed to a reference to "Minister". That means that existing (i) becomes (h) and existing (j) becomes (i). The substantive amendment is that a new clause 2(6)(a) be inserted in the Bill to read as follows:
"Section 51(4) be amended by substituting for the word 'Governor' the words 'Financial and Development Secretary'".
The effect of that will be that in respect of this fund the position will be as in the case of all other funds including the Pensions Fund, the Open and Closed Fund, which is that they are under the control of the Financial and Development Secretary.

I should just add, Mr Chairman, that the substance of the section that we are now dealing with is responsibility for investment decisions in the fund. Section 51(4) reads as follows:
"Any monies standing to the credit of the fund may from time to time be invested in accordance with such directions as may be given by the Governor".
That currently reads "Minister", without my amendment. With my amendment it would read:
"Any monies standing to the credit of the fund may from time to time be invested in accordance with such directions as may be given by the Financial and Development Secretary".
The Government do not believe that Ministers should issue directions in relation to the investment of the fund, that that should be done by the Financial and Development Secretary and that it was an unintended consequence and that is the need for the amendment. I commend the amendment to the House.

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

Clauses 3 to 5 and the Long Title were agreed to and stood part of the Bill.

THE SOCIAL SECURITY (INSURANCE) ORDINANCE (AMENDMENT) (No 2) BILL 1999

Clause 1

HON CHIEF MINISTER:

I wish to move a minor amendment to Clause 1, Mr Chairman, and that is that because of the delay in considering the Bill since its application, in the citation in Clause 1 that should read "this Ordinance may be cited as the Social Security (Insurance) Ordinance (Amendment) Ordinance 2001". Of course now in 2001 it is not "(No.2)", it is only No.2 because in the previous one it was in 2000. Now in 2001 we can also drop the "(No.2)" reference.

Clause 1, as amended, stood part of the Bill.

Clause 2

HON CHIEF MINISTER:

I have got some information just to clarify some of the things that I said to the Leader of the Opposition when we debated the previous Bill, the Social Security (Miscellaneous Provisions) Ordinance. I can confirm to him that "contributions" is intended to mean the quantum of the contribution not the number of contributions. That is provided for as the hon Member knows, in the principal Ordinance itself. I should add that stamps can still be purchased in the Post Office, but in respect of the 2000 year and contrary to what I told him, the Income Tax Department is indeed already collecting cash and has been since the end of January. Apparently, the view has been taken that the current law does not prevent cash being accepted instead of stamps. I cannot answer for that assessment, it is new to me but on that basis cash has been accepted since January.

Clause 2 and the Long Title.

Question put. The House voted:

For the Ayes:
The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon 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 P C Jerez
The Hon Dr R G Valarino

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

THE LEGAL AID AND ASSISTANCE ORDINANCE (AMENDMENT) BILL 2001

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

THE COMPANIES (EXECUTION OF DOCUMENTS BY FOREIGN COMPANIES) BILL 2000

Clause 1

HON K AZOPARDI:

Mr Chairman, I wish to move an amendment to the effect that in the Title the figure "2000" should be deleted and the figure "2001" inserted in its place.

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

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

THE COMPANIES (AMENDMENT) BILL 2000

Clause 1

HON K AZOPARDI:

Mr Chairman, I move the same amendment as previously, that is, that the figure "2000" be deleted and the figure "2001" be inserted in its place.

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

Clause 2

HON J J BOSSANO:

Mr Chairman, on this question of the provisions in 267A, in the way that it is drafted it talks about the ability to take off the register a company that has failed to make a Return since the 1st January 1993. Is that date an indefinite date? It is not that it is linked to now and it is eight years backwards?

HON K AZOPARDI:

As I explained earlier this is a cut-off date because of Companies House (Gibraltar) Ltd taking over the administration of Companies House. Therefore, that will be left like that. We will take the simpler procedure from 1st January 1993 onwards.

HON J J BOSSANO:

So effectively what is going to be done is an exercise going back to the 1st January 1993 including in respect of years before that?

HON K AZOPARDI:

Yes.

HON J J BOSSANO:

As I understood it, we are talking about Returns prior to the 1st January 1993 and we got the impression that we were talking in the Bill about Returns having to be made since 1st January 1993. Is it one or is it the other?

HON K AZOPARDI:

Mr Chairman, the way it is drafted, it will apply to all companies irrespective of date of incorporation that have since 1st January 1993 not filed Annual Returns. That is the way it is drafted. The way that Companies House intend to approach this, I understand, is to first deal with the batch of companies from 1929 to 1993. This also provides the mechanism for the companies from 1993 onwards given that it is drafted as to make it irrelevant what the date of incorporation is. What is relevant is the point at which they have failed to file Annual Returns. Mr Chairman I wish to also move an amendment as follows: Insert the figure "2" at the beginning of the sentence commencing "The Companies Ordinance is ....."

HON J J BOSSANO:

Can I ask a specific question, Mr Chairman. Will the law permit or not permit the application of the new provisions to somebody that has made a return on the 2nd January 1993?

HON CHIEF MINISTER:

It will not. If a company has filed just one Annual Return after the 1st January 1993 this mechanism will not be available against them. It is only in respect of companies that have not made a Return since the 1st January 1993. If a company has put in one Return after the 1st January 1993 then only the old procedure will be available against them. But if a company has not put in a Return since the 1st January 1993 both procedures are available against them and I imagine that Companies House will opt for this new one.

HON J J BOSSANO:

So effectively this is only applicable to companies that have been dormant for eight years?

HON CHIEF MINISTER:

One of the defects of the existing regime is that dormancy and compliance with filing requirements are not necessarily synonymous. The fact that a company is not filing Annual Returns as it must does not mean that it is inactive. Indeed, that is one of the reasons why the existing regime does not facilitate a clear-out because a company could own an asset somewhere and yet not be filing its Annual Returns in Gibraltar. The hon Member is right. The intention is to strike off companies that are dross, that are simply cluttering up the Register, that they are dormant, that they are inactive, they are no longer functional. But of course there is a procedure. The hon Member should be aware that the consequence of being struck off by either the new or the old procedure, for that matter, is that any assets that the company may have becomes the property of the Crown. Then there is a provision in the Ordinance that allows the company to make an application later to the Supreme Court for the company to be restored to the Register.

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 ELECTRONIC COMMERCE BILL 2000

Clause 1

HON K AZOPARDI:

Mr Chairman, I move that the figure "2000" appearing in the Heading be deleted and substituted by the figure "2001".

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

Clauses 2 to 10

HON DR J J GARCIA:

On discussing with the Chief Minister the question of the contact points he suggested that the Government would support an amendment from Opposition Members on that question. We were proposing to insert at the end of part 1 of the Bill a new Clause 10A with the subsequent renumbering that would follow which would be along the lines of "The contact point for the purposes of Article 19 of EU Directive 2000/31/EC shall be the E-Com Unit, Department of Trade and Industry, Europort, Gibraltar."

HON CHIEF MINISTER:

Mr Chairman, I would be grateful if the hon Member could clarify why it is important to do this by legislation. The designation of a Competent Authority for this purpose does not have to be in the Bill.

HON DR J J GARCIA:

There are two reasons for that. Firstly, because it is in the actual directive and secondly because it was discussed by the Minister and myself and we felt it was the best way to proceed.

HON CHIEF MINISTER:

I think that what the Minister agreed to was to consider any amendment that the hon Member might put in. I do not think he agreed to whatever amendment the hon Member might produce without having seen it. Government will not have any difficulty with the language of a particular amendment if we can agree but there are many many instances, the hon Member should be aware, when the way a directive is implemented, the implementation provisions in a directive are very frequently not contained in the piece of legislation that actually gives it legislative effect. It happens quite a lot but that said if the hon Member would pass the amendment?

Mr Chairman, the Government can go along with an amendment to the amendment even though I have to say that we consider the whole thing to be unnecessary. The Government frequently designate at an administrative level Competent Authorities or contact points for the purposes of European Union Directives which are not and do not have to be spelt out in the legislation. In our judgement it is unnecessary. I would not wish to specify the E-Com Unit because the E-Com Unit is something that may or may not exist in due cause so it will have to be the Department of Trade and Industry. Even then, the names of Departments change from time to time and I would prefer to find some defined name. It could just simply be the 'Minister' for example on the basis that the function will be discharged by somebody for whom the Minister is responsible. I think the way that this should read is "the Minister or such other person as may be designated by him" which gives the flexibility that I think is required whilst at the same time accommodating the hon Member's apparent desire to have this provided for in the legislation. Unless the hon Member is willing to adopt it as his own amendment, with which I would be quite happy, I would propose an amendment to his amendment so that his amendment would read "The contact point for the purposes of Article 19 of EU Directive 2000/31/EC shall be the Minister or such other person as he may designate".

HON DR J J GARCIA:

I will accept it as my own and propose the amendment if that is the procedure.

Clauses 2 to 10 were agreed to and stood part of the Bill.

New Clause 10A was agreed to and stood part of the Bill.

Clauses 11 to 18

HON K AZOPARDI:

We have looked at the point that the hon Member was raising before. He is quite right that Article 3(1) says "shall not make the provision of certification services subject to prior authorisation". It also then says in Article 3(4) that one can make those same certification services providers subject to supervision and I think there has been some confusion in the drafting because quite clearly if one looks at section 12(4) it says nothing in this section requires a certification service provider to obtain approval but, of course, the language of section 12(1) to 12(3) can be language of the rest of the provisions, it talks about approval. Of course, it runs counter to that concept but I think it can be dealt with because there is a mechanism for supervision and a very lengthy criteria against which certification service providers can be adhered to in the directive.

HON CHIEF MINISTER:

Mr Chairman, Government are advised by the Draftsman that there is no need to amend this part. The legislation does not make it compulsory. It is not compulsory for a certification service provider to obtain approval. That is the effect of sub-section (4) of Clause 12(1) which says that "nothing in this section requires a certification service provider to obtain approval." Section 12(1) says "on an application by a service provider....." but it is not compulsory to submit an application. It is entirely a voluntary regime rather like, the hon Members may remember, when this House passed legislation enabling one to register a Trust. It did not make it compulsory to register a Trust but some people wanted to register Trusts so that they could then go off and say "I have a registered Trust". This is exactly the same regime and sub-section (4) is intended to and we are advised achieves the objective of making it perfectly clear beyond doubt that the regime of section 12 creates no compulsion for approval. It is just for those who want it.

Clauses 11 to 18 were agreed to and stood part of the Bill.

Clauses 19 to 25 were agreed to and stood part of the Bill.

Clause 26

HON K AZOPARDI:

I have given notice of a small amendment to insert in section 26(1) after the words "to remove information" the words "(including for the avoidance of doubt a domain name)".

HON DR J J GARCIA:

There is one point which perhaps the Minister could clarify and that is to say the amendment to 26(1) mentions that the Minister may by notice in writing to a service provider require the service provider to remove information including for the avoidance of doubt a domain name from any system. A service provider, Mr Chairman, by the definition of the Bill appears to be somebody who is not providing those services from Gibraltar because it is another one which is an established service provider which is the person who provides the services..... in the definition there is also a service provider that seems to do something else. Perhaps the Minister could clarify that.

HON K AZOPARDI:

It is meant to be as wide as possible that is why we have used the widest possible definition of service provider because when we came to look at it we considered.....this is meant to tackle the situation where, for example, one might have a pornographic name in a domain name and so we needed to cast the widest net possible. If they are using Gibraltar as a channel we ought to have the power to be able to say no to that.

HON DR J J GARCIA:

Is this to establish that in the definition there would be people who would use Gibraltar as a channel which actually is not what the definition of service provider says.

HON K AZOPARDI:

I use the language loosely. What I am saying to the hon Member is I agree with him there are three definitions of service providers. This is the widest definition. It is deliberate. It is meant to be the widest.

Clause 26, as amended, was agreed to and stood part of the Bill.

Clauses 27 and 28 and the Long Title were agreed to and stood part of the Bill.

THE SOCIAL SECURITY (CLOSED LONG-TERM BENEFITS AND SCHEME) ORDINANCE 1996 (AMENDMENT) BILL 2000

Clause 1

HON MRS Y DEL AGUA

Mr Chairman, having given notice during the Second Reading I would like to move the following amendment:
In the Title replace the year "2000" with the year "2001".

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

Clause 2

The second amendment I would like to move is to substitute "31st March 2001" with "30th June 2001" wherever this appears.

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.

THIRD READING

HON ATTORNEY-GENERAL:

I have the honour to report that the Piracy Act 1837 (Amendment) Bill 2001; the Social Security (Miscellaneous Provisions) Bill 2001, with amendments; the Social Security (Insurance) Ordinance (Amendment) (No.2) Bill 1999, with amendments; the Legal Aid and Assistance Ordinance (Amendment) Bill 2001; the Companies (Execution of Documents by Foreign Companies) Bill 2000, with amendments; the Companies (Amendment) Bill 2000, with amendments; the Electronic Commerce Bill 2000, with amendments; and the Social Security (Closed Long-Term Benefits and Scheme) Ordinance 1996 (Amendment) Bill 2000, with amendments, have been considered in Committee and agreed to and I now move that they be read a third time and passed.

Question put.

The Piracy Act 1837 (Amendment) Bill 2001; the Social Security (Miscellaneous Provisions) Bill 2001; the Legal Aid and Assistance Ordinance (Amendment) Bill 2001; the Companies (Execution of Documents by Foreign Companies) Bill 2000; the Companies (Amendment) Bill 2000; the Electronic Commerce Bill 2000; and the Social Security (Closed Long-Term Benefits and Scheme) Ordinance 1996 (Amendment) Bill 2000, were agreed to and read a third time and passed.

The Social Security (Insurance) Ordinance (Amendment) (No.2) Bill 1999.

The House voted:

For the Ayes:	The Hon K Azzopardi
	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.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Monday 26th March 2001 at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 1.25 pm on Monday 5th March 2001.

Monday 26th March 2001

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 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 A A Trinidad - Attorney-General (Ag.)
The Hon T J Bristow - Financial and Development Secretary

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon 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 J J Holliday - Minister for Tourism and Transport

IN ATTENDANCE:

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

DOCUMENTS LAID

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

Question put. Agreed to.

The Hon the Chief Minister laid on the Table the Annual Report and Accounts of the Gibraltar Joinery and Building Services Ltd for the year ended 31st December 1999.

Ordered to lie.

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

(1) The Gibraltar Heritage Trust Accounts for the year ended 31st March 2000.

(2) Statement of Supplementary Estimates No.1 of 2000/2001.

(3) Statement of Consolidated Fund Reallocations approved by the Financial and Development Secretary (Nos. 3 to 5 of 2000/2001); and

(4) Statement of Improvement and Development Fund Reallocations approved by the Financial and Development Secretary (No.2 of 2000/2001).

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

SUSPENSION OF STANDING ORDERS

HON K AZOPARDI:

I beg to move the suspension of Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with Bills.

Question put. Agreed to.

THE MOTOR FUEL (COMPOSITION AND CONTENT) ORDINANCE 2001

HON K AZOPARDI:

I have the honour to move that a Bill for an Ordinance to repeal and re-enact the Motor Fuel (Composition and Content) Ordinance 1998 with amendments so as to transpose into the law of Gibraltar Council Directive 1999/32/EC relating to the sulphur content of certain liquid fuels, be read a first time.

Question put. Agreed to.

SECOND READING

HON K AZOPARDI:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this is a short Bill which implements Council Directive 1999/32 relating to the sulphur content of certain liquid fuels. The purpose of the Bill is to achieve the following: in the first place to make it an offence to use heavy fuel oil on or after the 1st January 2003 with a sulphur content exceeding 1 per cent subject to certain exceptions. Secondly, it makes it an offence to use gas oil or marine gas oil on or after the 1st July 2000 with a sulphur content exceeding 0.2 per cent per mass and to use such oil on or after the 1st January 2008 with a sulphur content exceeding 0.1 per cent per mass. Thirdly, it requires the Competent Authority to check by sampling the sulphur content of those fuels. It then revokes the Motor Fuel (Composition and Content) Ordinance 1998 which will be superseded by this Bill and it sets out technical requirements for the analysis of samples taken.

Mr Speaker, the general context of the directive is that it sets maximum permissible levels for the sulphur content of heavy fuel, 1 per cent from 2003 and gas oil 0.1 per cent from 2008 which are

used primarily in power stations and industrial boilers and furnaces. Sulphur is naturally present in small quantities in oil and coal and the use of these fuels for energy production, heating and transport results in sulphur dioxide emissions and one of the paragraphs which preface the actual directive makes clear this environmental thrust in the directive. Emissions of sulphur oxide contribute to poor air quality in and around urban areas which can endanger human health in the environment and they may also be transformed into sulphurs which as hon Members will know contribute to acid rain. Mr Speaker, the Department has consulted the industry in Gibraltar to see what are the consequences of this Bill. 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 initial directive was transposed into law on the 20th March 1998. It was brought by the Hon Mr Montegriffo who at the time said that there was not a Competent Authority to monitor this because it was basically self-regulatory more by the importers of the fuel than by anything else. But the new directive which is incorporated in the Bill has provisions for monitoring the importation of this fuel and has provision for having to inform the European Commission on an annual basis of the result of that monitoring and I would certainly like to know whether the Government have taken a decision of who in Gibraltar is going to be the Competent Authority. I note that there is power to make arrangements for this by Regulation but we would certainly like to know whether it is going to be the Environmental Health Department or any other area who are going to monitor this and who are going to report to the European Commission on an annual basis on the test of this.

Also, as the Minister said, it basically affects areas such as generating stations. I would like to know if possible if we have checked whether either of the two generating stations or the desalination plant are affected by this directive and whether the Departments or companies concerned have been informed that they need to take remedial measures before the directive is enforced. If that is clarified, we have no major objections to it.

HON K AZOPARDI:

Mr Speaker, on the first question, the Government have not yet taken a final decision in relation to the Competent Authority. There are different options. The hon Member mentioned one but we have not yet taken a final decision on that. Secondly, on the impact to the industry my predecessor consulted the industry in relation to this directive. The only plant that is affected, according to my notes, is Lyonnaise who, as a result of this directive, will have to start using different types of fuel at their desalination plant, a lighter type of fuel given that this directive represents restrictions on the heavy types of fuel. They will have to use a more low sulphur fuel which will increase, no doubt, the costs of running the desalination plant. They are the only ones who are affected by this directive.

Question put. Agreed to.

The Bill was read a second time.

HON K AZOPARDI:

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

Question put. Agreed to.

THE POLLUTION PREVENTION AND CONTROL ORDINANCE 2001.

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 the provisions of Council

Directive 96/61 concerning integrated pollution prevention and control, 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 Pollution Prevention and Control Ordinance 2001 implements the provisions of Council Directive 96/61/EC on integrated pollution prevention and control. The Ordinance is a relatively short one, only 10 sections, and largely refers back to the provisions of the directive itself. The purpose of the directive is to require certain industrial activities specified in Annex I to the directive to be authorised in order to attain a high level of protection for the environment as a whole. This is to be achieved by preventing or reducing emissions to air, water and land, including measures concerning waste. The directive applies to six categories of industry, that is, energy, production and processing of metals, minerals, chemicals, waste management and others. This last category includes facilities operating in the areas of pulp and paper production, textile treatment, tanning, food production and the intensive rearing of poultry and pigs. The House will note that few, if any, of the activities described are carried out in Gibraltar. Each facility covered by the directive must be made subject to authorisation through permits. New plants will have to comply with authorisation requirements as from the date of coming into operation of the proposed Ordinance, whilst existing plants have to apply for a permit by 30th October 2004. Permit holders are required to advise the enforcement authority of any changes or modifications in their operations. Furthermore, the enforcement authority must periodically reconsider and, if necessary, update permit conditions. Reconsideration must be undertaken, inter alia, when excessive pollution occurs or when technical developments allow significant emission reductions without excessive force. A permit is defined as that part of the whole of a written decision or several such decisions granting authorisation to operate all or part of an installation subject to certain conditions which guarantee that the installation complies with the requirements of the directive.

A permit may not be issued by the enforcement authority unless it can be guaranteed that an installation will meet the requirements of the directive. Permits are to include certain specific requirements such as details of arrangements made for air, waste and land. Emission limit values must be defined for pollutants likely to be emitted in significant quantities and, if necessary, a permit must prescribe requirements for protection of soil and ground water and management of waste. Emission limit values must be based on best available techniques, that is, the most effective and advanced techniques designed to prevent and, where this is not practicable, generally reduce emissions and impact on the environment as a whole. In all cases permits must contain conditions to minimise long distance and trans-boundary pollution and to ensure a high level of protection for the environment as a whole. Permits must also contain monitoring requirements and an obligation to provide data to the enforcing authority and measures relating to non-normal operations such as accidents.

Section 8 of the Ordinance requires the enforcing authority to comply with Articles 16 and 17 of the directive. Article 16 requires submission to the Commission of information on implementation of the directive. The limit values laid down for each specific category of installation and in particular the best available techniques from which such values are derived. Article 17 deals with consultation and submission of information between Member States where there are likely to be negative effects from the operation of an installation in one Member State on the environment of another Member State. I commend the Bill to the House.

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

HON DR R G VALARINO:

This Bill hardly affects Gibraltar, as the Minister has said in his wide ranging explanation. As far as Gibraltar is concerned the quantities are far too large and there is no reason why we should oppose this Bill.

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 SUPPLEMENTARY APPROPRIATION (2000/2001) ORDINANCE 2001

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to move that a Bill for an Ordinance to appropriate sums of money to the service of the year ending with the 31st day of March 2001, be read a first time.

Question put. Agreed to.

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill seeks the appropriation of a further £9 million from the Consolidated Fund to the current financial year to the 31st March 2001. The Heads of Expenditure concerned are set out in the Schedule to the Bill and further details in the statement of Supplementary Estimates issued to hon Members last week and laid in the House earlier today. The Explanatory Memorandum to the Bill explains how £3.9 million is required by three statutory bodies who are part funded by the Government. The remaining £5.1 million is for unforeseen departmental spending as set out in the Explanatory Memorandum.

Mr Speaker, the Chief Minister will be expanding on the requirements for the additional funds. I will just make two brief points which may be of assistance to Opposition Members in considering this Bill. First, of the £3 million voted for the Supplementary Provision in the Approved Estimates 2000/2001 some £2.2 million has already been reallocated. The remaining £800,000 is fully committed, hence the reason for this Supplementary Appropriation Bill. Secondly, should all the Supplementary Appropriation of £9 million be spent, about half of this amount is forecast to be met by higher overall revenue than we anticipated at the time that the Estimates were prepared. The rest would come off the bottom line reducing the projected surplus from around £16 million to £11 million to £12 million. I commend the Bill to the House and give way to the Chief Minister.

HON CHIEF MINISTER:

Mr Speaker, as the Financial and Development Secretary has just said, and as is also set out in the quite full Explanatory Memorandum that we have attached to the Bill, the requirements for this Supplementary Appropriation is a combination consisting of three factors. One is the need for accounting purposes to eliminate deficits that certain statutory bodies have been carrying forward from past years as well as providing them with additional funds for the current year in respect of which they have required more funds than was provided for in the Consolidated Fund. There is additional Government expenditure driven by policy. That, for example, is the case of a provision that was made in order to fund the Elderly Persons Minimum Income Guarantee

and then there are some additional expenses which are unavoidable and which reflect the fact that certain costs are imported into Gibraltar, the biggest of which is the cost of fuel increases as it affects the Electricity Department. Starting first with the £1.9 million by which we need to increase the financial provision made to the Gibraltar Health Authority, hon Members will be aware that the Gibraltar Health Authority does not operate for financial purposes as a Government Department and that what this House does, in effect, is just provide an annual subvention figure. True it is that this Government started the practice of providing at the back of the Estimates booklet and by way of information a pro forma Estimates broken down in detail of the Gibraltar Health Authority, but it does not alter the fact that for the purposes of financial control the Gibraltar Health Authority is not a Government Department and what we approve here are not funds for specific purposes as we do with Government Departments but rather a subvention figure which is usually the balancing figure that they need after our own revenue derived from the Group Practice Medical Scheme fees and things of that sort. That is the figure, therefore, that we are voting to increase here by the amount of the subvention provided by the Consolidated Fund to the Gibraltar Health Authority.

Mr Speaker, the accumulated deficit as on 31st March 2000 was £1.3 million and I shall not repeat the figures for the purpose of Hansard because they are set out in the Explanatory Memorandum or perhaps I should because the Explanatory Memorandum is not put into Hansard. As I said the Gibraltar Health Authority had an accumulated deficit as at 31st March 2000 of £1.3 million and that comprises a deficit of £468,000 developed in the Financial Year 1997/98; £152,000 in the Year 1998/99; and £667,000 in respect of the Year 1999/2000. The bulk of the sum, however, relates to £1.6 million of actual overspend this year and that relates as follows:

Net Pay Settlements	£500,000
Prescriptions	£500,000

Compensation, claim in respect of a child whose delivery was mishandled in Maternity and there is now a large settlement of that case. I am happy to tell the hon Members privately, if they have not already identified the case,

Compensation	£300,000

and that is I think a small part of what the settlement will cost. The Government are working on what is called a structured settlement. Rather than paying out a capital sum, this is now standard practice in the UK as well, it is called a structured settlement where the party responsible usually the Health Authority in the UK makes annual payments for the maintenance and support of the person concerned rather than pay out a capital sum which bears no relationship to the life expectancy of the person. There is a £300,000 element of fees and expenses which are being paid out. I think, although I cannot be certain, most of the £300,000 is in respect of the cost of purchasing a suitable property in Gibraltar which is part of the settlement for that family. This case goes back to 1986.

£100,000 extra expenditure on medical and surgical appliances; £100,000 on hardware which is mainly clinical waste disposal bags and an extra £80,000 for dressings, medical gasses and tests et cetera. That makes £1.6 million which is the bulk of the expenditure. £300,000 is the extra additional provision for previous years deficit. The £1.9 million that we are seeking to vote additionally for the Health Authority is comprised as to £1.6 million of actual additional expenditure this year and £300,000 additional provision for elimination of a previous year deficit. Of course, that money has already been spent in the previous year by way of an advance from the Consolidated Fund. That last £300,000 is not actually money that is going to be spent, it is more a provision to enable what presently stands in the books of the Government as a debt by the Gibraltar Health Authority to the Consolidated Fund to be converted into a grant. But in order for it to be converted into a grant it has first to be voted by this House.

Mr Speaker, the second heading which the hon Members will see still under statutory bodies £1.5 million is required by the Gibraltar Development Corporation Employment and Training Division.

This additional expenditure is partly to meet the Gibraltar Development Corporation deficit for the year 1999/2000 and that accounts for £211,000. Again, as in the case of the Health Authority, that had been funded by an advance from the Consolidated Fund. The need for additional expenditure arises principally as follows: the Forecast Outturn for the year to 31st March 2000, which was published in the Estimates of the year 2000/2001 projected a contribution from the Consolidated Fund of £137,000, whereas the actual contribution required turned out to be closer to £600,000. In the Estimates for the year just ending now, whereas we projected a contribution from the Consolidated Fund of £130,000 the actual requirement has been £600,000. Of this £600,000 some £393,000 was met from the Supplementary Funding vote. This left a deficit to be carried forward of £211,000 which is now being made good by way of Supplementary Appropriation Bill. This amount can be attributed to a shortfall in receipts of £37,000 and £174,000 on training and vocational cadets.

Of the remaining £1.3 million out of the £1.5 million that we are voting for this purpose, about £800,000 is to meet projected shortfalls in receipts of European Social Funds which are now unlikely to be received before 31st March 2001. The delay in recovering monies has been due to time lags and submissions of applications in respect of the EU Programme ending on 30th June 2000 by Government Departments. The £800,000 has now been claimed and will be recouped in the next Financial Year 2001/2002. That is really a cash flow provision.

Mr Speaker, expenditure incurred on training courses on vocational cadets is £800,000 higher than estimated which has been offset by underspend in some areas. The changed expenditure profile can be largely explained as follows: in terms of overspends on training we have £200,000 on vocational and post-graduate courses; £80,000 on civil service training; £65,000 on the delivery of maritime-related courses; £60,000 in the Cammell Laird training facility; £45,000 on remuneration for nursing trainees. On the vocational cadet side there has been a £200,000 over-expenditure on a scheme for JBS to employ apprentices that came out of the Construction Training Centre and a provision of £150,000 to provide for the Social Security contributions of trainees. All those were the overspends. The underspends were £187,000 on the Construction Training Centre and £35,000 on subsidies. The effect of the over and under expenditures is the need to provide this additional vote that we are now considering.

Mr Speaker, under the heading Employment and Public Services, Environment, Sport and Leisure there is a large provision in the Bill of £3.9 million. There are a series of large factors here, almost all of them outside our control. I think it is probably true to say all of them outside our control. The first item is the provision of £200,000 for the disposal of refuse. Following the unexpected breakdown of the incinerator in April 2000 alternative arrangements had to be made to dispose of refuse in Spain. The additional cost over the provision in the Estimates for the now defunct In-Town contract is £100,000 for normal household refuse and a further £100,000 to dispose of clinical waste. Let me just explain that to the hon Members. The historic In-Town disposal had a cost and it is that cost that is provided for in the Estimates, it was £1.7 million. That contract, of course, was terminated by the Government purchase of In-Town and that money has been available to the Government for the alternative refuse disposal purposes. Therefore, the £200,000 that we are now voting is the extent by which the new refuse disposal arrangements are more expensive than was provided for for the old disposal arrangements. I would not wish the hon Members to think that £200,000 is the cost of the new refuse disposal arrangements. We have also used the money that was provided for the old refuse disposal arrangements which, of course, were ended as soon as the In-Town contract was ended. It was subsequently taken over by the plant now in the operation of Government, but of course when it broke down the Government-owned plant could not take over the disposal. In chronological order the Government purchased the plant and therefore cancelled the In-Town contract but then continued to run the plant in its own ownership using the existing operators as managers. Then the plant broke down and had to stop burning refuse pending a

reconstruction project which is under consideration. The effect of the breakdown of the plant was not just felt in the area of refuse incineration not only as a result of the breakdown of the plant. Government had to make arrangements for our refuse to be burnt in Spain but of course Lyonnaise des Eaux lost an important source of water supply to them because the plant, without the ability to burn refuse, could not produce water from its desalination plant. In order to tie Lyonnaise des Eaux over and so that there should not be a deficit in Gibraltar's ability to produce the water that it requires the Government agreed with Lyonnaise des Eaux to hire and run at the desalination plant two portable boilers so that the desalination plant at the refuse incinerator has continued to operate. Instead of using the steam created as a result of burning the refuse as fuel for that distiller what has happened is that in effect a boiler has been plugged into it. Those were hired from the UK and the cost of running those for this year is £700,000 which is the figure being required. That will be partly reduced in the future although it will not happen this Financial Year because the Government are now entitled to invoice Lyonnaise for the water that we have been able to produce. Although it was not done obviously as a revenue-raising measure the boilers were hired in order to ensure that Gibraltar had enough sources of water production but under the contract with Lyonnaise the incinerator is entitled to charge Lyonnaise for water produced and exported by the incinerator to Lyonnaise. It is expected that that will generate revenue of about £200,000 as at February 2001. As it will not be invoiced and it certainly will not be received during this Financial Year it has not been netted off and what we are seeking from the House is the whole of the £700,000.

A very large item, Mr Speaker, is for fuel in connection with electricity and there is a total of £2.5 million. That results in two different ways. Of that £2.5 million which is the additional cost of generating electricity in Gibraltar as a result of the increase that there has been in the cost of fuel oil in the international market over the last year, £800,000 is the additional cost of fuel consumed by the Government's generating station. But, of course, the contract with OESCO for the purchase from OESCO of electricity also has a fuel cost adjustment surcharge formula so that OESCO has been entitled and has exercised its right to raise the fuel cost adjustment surcharge that it charges the Government for electricity that the Government purchased from OESCO. That has represented about £1.46 million on existing levels of electricity purchased plus £240,000 in respect of higher electricity purchased. £1.46 million has been paid to OESCO in respect of higher fuel surcharge due to the increased cost of fuel internationally and an additional £240,000 has been paid to OESCO simply because more electricity that was envisaged has been purchased from them this year under the contract.

Still under Head 4 Public Service, Environment, Sport and Leisure there is a £500,000 provision for an additional grant to GBC to eliminate the accumulated cash deficit as it existed at the end of the Financial Year ended 31st March 2000 and a significant part of this year's forecast deficit. They had a cash deficit of £260,000 as at 31st March 2000. As at the end of the last Financial Year they carried forward a cash deficit of £260,000. This, primarily, arose because the commercial relaunch of GBC did not produce the projected increase in sales revenue but of course incurred the increased staff and related costs. No supplementary funding was made available except in respect of pay settlement in the Government's Financial Year 1999/2000 due to commitments elsewhere. The consequence of this was that most of GBC's Social Insurance and PAYE for that year was not paid until the first quarter of the current Financial Year 2000/2001. The other £240,000 in the Supplementary Appropriation Bill is to meet a projected cash shortfall in the current Financial Year comprising £180,000 and the repayment of overdraft facilities of £60,000. All in all a £500,000 grant to GBC roughly split, fifty/fifty between deficits in respect of their last Financial Year and this Financial Year just ending.

Moving now to the Social Affairs Vote, Head 5, a provision of £300,000 is to provide a grant to the Social Assistance Fund in connection with the commencement of funding of the Minimum Income Guarantee Scheme. Of course, this figure of £300,000 does not reflect the cost for one year of the Scheme, only that

part of it which is thought might be paid out in what is left of the current Financial Year. Indeed, it is wholly unlikely that £300,000 will be paid out before 31st March. There is provision to enable the Social Assistance Fund to have some provision so that it can get on with payments in April and May. There is no accurate measure yet of what the cost of the Minimum Income Guarantee Scheme will be in a full year. That will become clear only when the last of the applications have been processed.

There is, under Head 15 Supplementary Provision a provision of £1 million for the subhead (a) Pay Settlements and this is to provide further funds towards the cost of meeting the 1999/2000 Pay Awards, both of which have been settled, in part, in the current Financial Year. The total cost of the settlements up to the 31st March 2000 is forecast to be over £2 million. This reflects only arrears of salaries. Because of the time it has taken to calculate and check arrears of overtime and allowances these are not now expected to be paid for most Departments until April 2001 at the earliest. There could therefore be around £500,000 which could be available for re-allocation to the Supplementary Funding subhead as required. We may not need the whole of the £1 million extra that has been provided for in this Bill. It depends how quickly the Treasury processes the calculation of the overtime and allowances part. As the hon Members will recall when there is a retrospective Pay Award the easiest part is to calculate how it affects peoples' basic pay but then one has to apply retrospectively to their allowances and to their overtime hours and that is a much more complicated exercise that takes longer. I commend the Supplementary Appropriation Bill to the House.

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

HON J J BOSSANO:

Mr Speaker, on the general principles and merits of the Bill we are not going to go into every item on the statement that accompanies the Bill. We will actually be asking questions on the items when we come to vote the items in the Committee Stage. Perhaps if I can give some indication of some of the things now then it will help to have the information, if possible. On the last item that has been mentioned on the Social Security we appreciate that the final figure will not be known until the final person has been processed but presumably there is now an advance on the information that was not available at the time of questions, when I had a question on the numbers and the breakdown of the different categories of income. We would like therefore to have what is the most recent assessment in the knowledge that that is not the final figure. Presumably, the fact that £300,000 has been put there as opposed to £200,000 or £400,000 must be there for a reason.

I note that in talking about the general principles in the Explanatory Memorandum of the Bill and in the opening statement when the Chief Minister spoke just now, initially in relation to the Health Authority he talked about the clearing of the deficit accounting for £1.3 million but I think he corrected that at the end when he said that the money we are voting now is £300,000 for the clearing of the deficit because at Budget time there was already a sum of £988,000 because otherwise the figures do not add up because if it is £1.3 million and £1.6 million it should be £2.9 million.

I think also it would be useful to have an idea in relation to the amount of money that is being spent on the water production as to the volume of water that this has produced and what the hire cost and what the running cost of these boilers are and for the period covered by the £700,000 so that we can have an idea if it carries on beyond the 1st April, what is the monthly cost and an idea of the output so that even though the figure is not netted I think it would be useful to know what the net effect on the Government finances are given that a figure of £200,000 as potential yield from the sale of water has been given in relation to £700,000. Would a reasonable deduction be that we are making water at three and a half times the cost of what we are selling it for or not? If not, I think an indication of volume and time over which the £700,000 is spent would help to make an assessment of that.

I also feel that in terms of the £200,000 additional cost to the disposal of refuse, is it that when the incinerator is functioning presumably we will be producing water without boilers, will that be producing revenue for the Government or will it be producing revenue for the manager? Therefore, the contracted cost of refuse disposal when there are no boilers, is that a gross figure against which a revenue amount is being yielded which will appear presumably on the other side of the Government accounts or is that a net figure that the contractor is paid but he keeps the money from the water?

Apart from that on the question of the grants no doubt my Colleague will want to have some information because we had raised at the time whether there was enough money being provided a year ago for scholarships. We would like some information on those which will be dealt with at the Committee Stage.

HON CHIEF MINISTER:

Sticking to the general principles, Mr Speaker, and leaving for the Committee Stage what is best dealt with at that stage, I am afraid I am not able to give the hon Member today more information than I have on the annualised cost of the Minimum Income Guarantee Scheme. I am advised by the Minister for Social Affairs that the information that he asked for at Question Time is still being worked on by the Department. The Department is projecting a figure of somewhere in the order of £1 million for a year being the cost of this but if I were the hon Member I would not attach too much scientific value to that figure indeed or any at all. I certainly have not. I am waiting for the applications to be assessed and the payments to begin in earnest in the right quantity for the total cost to be assessed. As soon as we have it available I will see that it is passed on to the hon Member without him having to ask for it.

The hon Member is quite right on his interpretation of what I hope I said, obviously I had not said it clearly enough on the GHA deficit. There had been provision in the Estimates and this is an additional provision.

On the last point that the hon Member raised, water production, there were two parts to the question. First was the cost. Yes, we are producing, Government are sustaining a loss on an interim basis. We have a contract with Lyonnaise which establishes the rate at which the plant has to provide water to Lyonnaise. That rate is fixed by the contract. It is not cost-related and therefore the plant which now means the Government have had to incur extraordinary cost in order to be in a position to provide that water, not because there was enormous pressure in contractual terms from Lyonnaise for the Government or the plant to comply but rather because Gibraltar needed the plant's capacity. The Government were advised by Lyonnaise that the continuity of water supply in the event of other machine breakdown or essential maintenance could not be guaranteed if the source of production that was the desalination plant in the incinerator was offstream for any lengthy continued period of time. As at that stage the Government were not in a position to confirm that the incinerator plant would be up and running within even a 12 month period it was thought necessary to incur the extra expenditure of the Government in effect providing water and supplying it to Lyonnaise at a loss. The gross cost is £700,000 of which we hope to recover the £200,000 that is the revenue from the invoice that will be sent to Lyonnaise for the water that has been produced. That situation should not prevail beyond..... I think it is scheduled for June but subject to technical.....at the same time it was decided that Lyonnaise should invest in a new desalination plant of its own which the Government have allowed it to build in one of the caves behind the incinerator so that it could make use of the pipe infrastructure that already exists. That is a Lyonnaise desalination plant and that is I understand scheduled to come on stream in June at which time, from the point of view of Gibraltar's water production capacity, it will be possible to stop using these boilers, send them back to the UK and therefore stop incurring the cost of running them which are basically hireage and fuel consumption. That will have been a

one-off expenditure during an interim period whilst Lyonnaise built a new additional reverse osmosis desalination plant.

In so far as the future of refuse incineration is concerned, and how it has been operating in the interim which is the two things the hon Member touched on, no, the Government are now the owner of the plant and therefore we are not paying anything at all, the plant is not burning refuse. At the moment burning refuse is just a cost to the Government, the cost of collecting the rubbish from the incinerator dumping area next to it and transporting it in lorries to the refuse tip in Los Barrios. That is just pure cost. In addition to the cost of the burning fuel and burning the refuse in Spain plus the cost of transporting it to Spain to be burnt the Government are also paying a cost for keeping the non-functional refuse incinerator going. For example, we have not made any of the staff redundant and therefore the Government are still paying for the salary costs. The old managers are still there but on a 15 per cent cost plus formula. The costs are actually very little, the costs are probably now down to the salaries of the staff because they are probably doing very little maintenance work. That, in turn, is because the Government are about to make a decision on the future of that plant, the future for refuse incineration in Gibraltar since the burning of the refuse in Spain itself is an interim measure forced upon us by the breakdown of the plant in circumstances that we were told was simply beyond repairs. The patch up work done on it systematically especially to the burning chambers over the last five or six years just could not be done any more. The thing had to be stripped down and rebuilt. Then there is the question of additional new requirements on smoke emissions and things which had to be incorporated into the repairs. We are in the realms of a reconstruction of the incinerator. That raises issues of whether in the reconstructed plant we could produce water or electricity or just go for a simple incinerator? All that has been number and technology crunched over the last year and the Government are on the verge of making a decision for the new incinerator project. There is no netting in terms of refuse and there is no contractor earning anything. Everything is cost absorbed by Government in terms of refuse incineration. The plant is owned by a Government company called Europa Incinerator Ltd so the revenue of £200,000 would be revenue of Europa Incinerator Ltd rather than revenue of the Consolidated Fund. It is a netting off to that effect. At the moment it is £700,000 of cost to the Government. The £200,000 will be invoiced by Europa Incinerator Ltd.

Therefore, Mr Speaker, it has not been a good year in terms of mishaps. Not only have we, in financial terms, had to sustain the most significant financial cost of a sharp increase in the cost of fuel as it affects electricity generation but we have also had to contend with the consequences of a broken down incinerator which has generated severe additional extra cost for the burning of refuse. That, in turn, has had repercussions on our ability to desalinate enough water which has required us to spend additional money on making sure that we can keep up our water production costs.

HON J J BOSSANO:

Would the Chief Minister give way? I asked about the period for which the £700,000, is it for a full year? Would we be talking that it is now costing £2.2 million in a year or is this for part of the year?

HON CHIEF MINISTER:

Mr Speaker, the boilers were in Gibraltar, up and running, in August 2000 but I dare not tell the hon Members the cost relates from August because I am sure that we have been contractually bound to pay hireage from the moment that they left the supplier in the UK. I have not got available the exact date but it is for less than a 12 month period that £700,000 because if they arrived here in August they may have come on hire in June, July. As far as this financial year is concerned it is from June, July to end of March and possibly April and May of the next financial year depending on when the new Lyonnaise desalination plant comes on stream which, as I told the hon Member, is scheduled for June. I have figures for the months during which the water to be

invoiced was produced. I am sure the hon Member is not particularly interested in that.

Question put. Agreed to.

The Bill was read a second time.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

Question put. Agreed to.

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 Drug Trafficking Offences Ordinance 1995 (Amendment) Bill 2001.

(2) The Motor Fuel (Composition and Content) Bill 2001.

(3) The Pollution Prevention and Control Bill 2001.

(4) The Supplementary Appropriation (2000/2001) Bill 2001.

THE DRUG TRAFFICKING OFFENCES ORDINANCE 1995 (AMENDMENT) BILL 2001

Clause 1

HON CHIEF MINISTER:

I think I mentioned during the Second Reading that the Bill had been erroneously drafted in that it was headed Amendment to section 43 and then goes on to say ".....section 43 of the Drug Trafficking Offences Ordinance 1995 should be replaced with the following new section.....". That was never the intention. Section 43(a)(1) that is set out in the Bill is not instead of the existing section 43, it is in addition to the existing section 43. The heading should be changed to read "amendment to the Drug Trafficking Offences Ordinance 1995". Then, the first sentence should read "the Drug Trafficking Offences Ordinance 1995 shall be amended by inserting the following new section after section 43".

The amendment that I moved deals with that defect as well with which my amendment deals and in front of everything that I have just said there should be the figure "2" so all of that should be the second. Clause 1 should be the citation headed "Citation 1. This Ordinance may be cited as the Drug Trafficking Offences Ordinance....." and then we have the new heading amendment to the Drug Trafficking (Amendment) Ordinance 1995. Then there should be a "2" as in paragraph numbered 2. dealing with the clause introducing new clause 43(A)(1). My amendment includes adding the figure "2" in front of the new language which I suppose means that I have spoken slightly prematurely since we are in clause 1.
Clause 1, was agreed to and stood part of the Bill.

Clause 2

HON CHIEF MINISTER:

Mr Chairman, I have a new amendment on Clause 2

HON J J BOSSANO:

When we discussed the Second Reading what the amendment is now curing is what caused me to say that at the time we were not in a position to give our view on this because we had assumed from the wording that is now being corrected that this was replacing the existing section 43 and as far as the general principles are concerned it raises quite different principles if this is in substitution of section 43 or in addition to section 43. Clearly, in terms of what the Bill seeks out to do we wish to support anything that is required in Gibraltar to ensure that it does not get used for drug trafficking or for money laundering. Therefore, there is no problem with that particular principle. That, as far as the way that it is being done or the need to do it, in the Explanatory Memorandum it says that the purpose is to increase the Police and Customs powers in relation to the investigation of offences and that this is achieved by allowing the courts to provide an Order for a person under investigation to appear before the Judge with specified materials. This does not seem to be what it is doing.

Let me say therefore what we would like, in the light that this is not what it is doing and originally we were told that this was about Production Orders which were different from the existing provisions which were about getting Warrants and searching places. I think also an indication was given that it was so that people like banks or intermediaries could produce information to the Courts. We would want to know that this is because (a) we cannot do it with the law as it stands now and there is a problem; (b) that this is something that the industry has been consulted upon and will create for them difficulties in being required to do something here that is not being done somewhere else. We would like to know if there are similar provisions in the UK and whether we have actually lifted it out of the UK legislation and brought it in as a result of the fact that it is an addition to an existing law which has not been on the statute book all that long.

HON CHIEF MINISTER:

What the hon Member is asking me is to repeat the Second Reading remarks that I made to him but I am very happy to make them to him again. The Bill is designed to create a procedural deficiency rather than giving any new rights of substance. I will explain that to the hon Member.

As the Drug Trafficking Offences Ordinance 1995 presently stands, existing section 43, the one that we nearly inadvertently repealed and accounts for my first amendment, the existing section 43 provides for a Search Warrant to be obtained by Police or Customs Officers for material to be seized and for that to be transmitted onwards by the Attorney-General to the investigating authority on whose behalf following receipt of a Letter of Request the whole thing has been done. One can only obtain a Warrant to go and search and seize material and then have the Attorney-General ship it out to the requesting party if it is on premises in the possession or owned and controlled by the person being investigated or having been charged, in other words, the defendant, the accused or intended accused. Section 43 Search Warrants apply only, as it says, that criminal proceedings have been instituted against the person in another country; that the conduct constitutes an offence in Gibraltar; and that there are reasonable grounds to suspect that they are on premises in Gibraltar occupied or controlled by that person. Section 43 applies only to the seizure of evidence from property occupied or controlled by the person under investigation. That is existing section 43. Existing section 60 already provides for the obtaining of Production Orders from third parties, in other words now no longer for property on the premises of the accused or intended accused or from a bank or a lawyer. The problem is that section 60, unlike section 43, does not go on to say "..... and the Attorney-General can just ship the information away." Section 43 has the mechanics for seizure, for search and obtaining the information and for the material seized to be shipped off to the requesting party but applies only to information, evidence and material on premises owned by the accused. Section 60, which is not so limited, applies to third parties and materials and evidence on property in the possession of third parties but does not go on

to say that the Attorney-General, having obtained the Order, and it is not just the Attorney-General, this power is open to the defence as well, having executed the Order by going in to search and seize, is then not free to simply pack it all in a cardboard box and post it off to the requesting authority. What he has hitherto been required to do, once he obtains the material from a third party's premises, is regulated by existing Section 40 which is that he has to appoint a court, the old examining procedure, where a Gibraltar Court or examiner is appointed, then takes evidence again from the person in control of the third party premises, the evidence is formally tendered at that procedure and then the Attorney-General is free to pack it off. What the Bill is intended to do is simply to provide a mechanism whereby at the end of the Production Order procedure the Attorney-General has the werewithal to provide the seized information, the law for the obtention of which already exists, but has the means, the legal cover, for providing the information obtained from a third party under the Production Order section which he already has under the Search Warrant procedure of section 43 in respect of evidence seized from premises owned or controlled by the person under investigation. The hon Member is right in harbouring the view that one ought not to deal with material found on the property of the person actually under investigation in the same way as one treats information in the possession of a third party. The law as it presently stands simply means that that takes a long time. It can be done but it just takes several months to set up this court under section 40 of the existing law and this delays investigation and according to the Attorney-General brings the matter of the jurisdiction into disrepute and it takes us a very long time to deliver the fruits of Letters of Request. But the section 40 procedure does have the advantage that whether or not there is some form of judicial reviewing of the information, of the evidence that will ultimately be delivered and that the court has an opportunity to take that into consideration. The legislation drafted by the Attorney-General would require him as indeed the existing section 60 does to obtain a Court Order to enter and search but then the court never reviews the evidence seized. It is a purely administrative act. Once the Order is obtained he just sends it on his own discretion. The Government believe that there is an issue there of the control of international gateways in a way that is capable of affecting the Finance Centre. I am glad that Opposition Members subscribe to the view that Gibraltar should play its full part in the international fight against international drug trafficking and money laundering. The Government, of course, share that view but it is also important that we do it in measure which is consistent with how this is done by other international finance centres who are equally committed to the fight against international drug trafficking and money laundering and that we do not create an international gateway for the outflow of information which is exclusively in the control of an authority that may not be as attuned and sensitive to the interests of the Finance Centre as others would be.

I hope the hon Member will recall from his days in the desk at which I now sit that as a matter of practice requests for international co-operation of this sort systematically and correctly come to No.6 Convent Place because international co-operation of this sort is not exclusively a judicial matter. International co-operation and exchange of information is initially a political administrative matter and then becomes judicial in the implementation of it. In England requests for international co-operation go to the Home Office where the Minister then makes a decision whether, as a political matter, as an administrative matter, the request should be entertained and if he thinks they should be then it gets dealt with by the judiciary in the same way. Therefore, Mr Speaker, to ensure that this new procedure that is being set up complies not only with the well-established practice but indeed is also subject to a consideration which has regard for the interests of the Finance Centre and financial service institutions in Gibraltar, I have given notice this morning of a further amendment so that in section 43(A)(10) on page 6, where it says "no application for an Order shall be made by virtue of sub-section (2) except in pursuance of the direction given by the Attorney-General", after the words "in pursuance of a direction given by the Attorney-General" there should be added the words "with the prior consent of the Government expressed in writing by the Chief Secretary". That is in practice the practice and has been for such times. When Comission Rogatoire reach Gibraltar

they come to No.6 Convent Place where primarily they are tested for whether there is any political issue that arises. The hon Member may recall that there are issues about whether the ones that come from Spain are properly directed or they are addressed in a way that recognise the competence of our Attorney-General and the competence of our Courts and are not just addressed to the United Kingdom in a way that would avoid recognition.

Mr Chairman, I commend the amendment to the House not just because it will give statutory effect to current practice but also it will enable the Government to ensure that these powers are exercised only in genuine cases of drug trafficking and not systematically in a way which will cause harm to our Finance Centre in terms of sending the signal that Gibraltar is an open book without a regime that protects legitimate business. We are all agreed that there should be a full and rapid disclosure of information to assist the international fight against drugs and drugs trafficking but only in appropriate cases and that that procedure should not be used more widely in a way which would be incompatible with the need of financial services institutions to preserve the right of confidentiality of bona fide customers of banks, lawyers, accountants and people of that sort.

HON J J BOSSANO:

Mr Chairman, is it that the amendment now has been moved to the second amendment? Let me say that the amendment of course raises some principles which are not evident from the original Bill. I do not know to what extent it happens systematically already. The Chief Minister asked me to recall that it used to happen systematically in my time. Certainly, I do not recall a political decision being taken on whether a Comission Rogatoire should be responded to or not except obviously that it was standard practice by the officials that if it was not properly drafted it was sent back on the basis that it was not properly drafted. That did not require a political decision except that it would have been unacceptable that, for example, Spain should try and seek the co-operation of Gibraltar and at the same time try and seek to pretend that Gibraltar does not exist and trying to do both things simultaneously. But, of course, the proposed amendment, if I am reading it correctly, means that the Government of the day will be entirely free to determine in the exercise of their judgement whether they want to provide the evidence once it has been obtained or not.

HON CHIEF MINISTER:

No, Mr Chairman, that was the clarification that the hon Member had sought. The consent of the Government is only required to the initiation of the procedure but once the procedure is initiated, once the Court Order is obtained by the Attorney-General, then the Government do not even get to see the evidence collected. The Government's consent is needed to the making of the application, not to their processing and not to the decision whether they should deliver the fruits of the procedure.

HON J J BOSSANO:

So what the Government then have to give the okay to is for the request to be channelled through this procedure but once it is channelled through that procedure it follows automatically?

HON CHIEF MINISTER:

It follows automatically without any further political or administrative involvement. It is up to the Court whether it accedes to the application and I suppose it is up to the Attorney-General whether he hands over the information material obtained or not. The Government have no role. This is a gateway check and balance, not intervention in the procedure once the gateway has been passed.

HON J J BOSSANO:

Can the Chief Minister confirm whether this has been more or less taken from the UK law? Or is it something that is home grown?

HON CHIEF MINISTER:

Mr Chairman, I cannot tell the hon Member because we have not drafted the Bill. The Bill has been drafted in the Attorney-General's Chambers. I cannot tell him whether the whole of the rest of it reflects, in drafting terms, whether it is a crib of UK law. The concepts are the same as UK law Production Orders. All international applications go to the central authority who is the Home Secretary and then he says okay and then it is subjected to the national domestic procedural regime for handling such requests after it has been signed off. The hon Member will have come across this in newspapers in terms of extradition. The Home Secretary first has to say yes then it goes to the courts who are subjected to judgement.

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 MOTOR FUEL (COMPOSITION AND CONTENT) BILL 2001

Clauses 1 to 14, Schedules 1 to 3 and the Long Title were agreed to and stood part of the Bill.

THE POLLUTION PREVENTION AND CONTROL BILL 2001

Clauses 1 to 10 were agreed to and stood part of the Bill.

Schedule 1

HON DR R G VALARINO:

In Schedule 1, waste management, sub-section (5) I wonder whether the Minister would care to enlarge on 5(1) and 5(2).

HON LT COL E M BRITTO:

There is not really a lot to enlarge except to confirm to the hon Member that those two clauses apply directly to the disposal and recovery of waste and the incineration of waste and as such they will apply to the incinerator or such incineration or disposal activities that take place in Gibraltar. The Bill as hon Members will have noticed, tightens up pollution control and therefore, by implication, there will be increased costs in that we expect that there will be additional requirements on the incinerator than there have been in the past.

HON J J BOSSANO:

Mr Chairman, I think it is normal practice when we have got things like standards that need to be kept in this area, that existing plant get treated in one way and new plant gets treated in another way. When the incinerator was built it was obviously a vast improvement on what used to exist in Devil's Tower Road but the same requirements could not be made on the plant that existed in Devil's Tower Road as were made on the new plant that the Danes put in place. In our case, given what we have been told about the plant now facing a policy decision on what is a major reconstruction, would that mean that it would be treated as a new plant or would it be treated as an existing plant in terms of the requirements to get a licence?

HON CHIEF MINISTER:

Mr Chairman, this is not the European Directive that impacts most directly and immediately on the environmental aspects of waste incineration. Part of it is covered if the hon Member looks in the Schedule at page 35. These rules do apply, for example, to installations for the incineration of municipal waste but only when it is covered by the Public Health Offensive Trade Rules. The general waste incineration is covered by other Rules which deal mainly with smoke emission requirements and they do not distinguish, in other words, existing plant, one gets a period of time to add the additional capacity, usually it is a higher grade of

purification but in turn under those Rules there are different regimes applying to incinerators of different capacities. If one has a refuse incinerator that burns more than three tons per hour a much more stringent set of environmental controls apply than to small incineration plants which are defined as those that burn less than three tons per hour and obviously that would be borne in mind. That is one of the factors in the project that I described earlier.

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

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

THE SUPPLEMENTARY APPROPRIATION (2000-2001) BILL 2001

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

Schedule

PART 1 – Consolidated Fund Expenditure 2000/2001

HEAD 1 – Education, Training, Culture and Health

HON S E LINARES:

Mr Chairman, can the Minister explain why he has seen it necessary to ask for additional funds of £400,000 in relation to mandatory and discretionary grants? Is it because in the last two budget speeches he announced the increases of Maintenance Grants by 10 per cent or is it the increases that were announced on the Rail Fare Travelling Expenses which went up by nearly 90 per cent? Is it the Tuition Fees which as the Minister stated that the British Government have ceased payment for these fees and that these had meant a heavy bill on our recurring expenditure? In the Maintenance Grant the Minister announced that the parental contribution was going to be reduced to £500 below £20,000 of joint earnings or is it the £350 for the ones who were above £20,000? Can the Minister give a breakdown of the expenditure?

HON DR B A LINARES:

Mr Chairman, it is all those factors put together. The main factor in analysing the expenditure is the increased number of students who went to study in September 2000, 263 students as opposed to 194 the previous year. This is mainly because of our student success in 'A' levels, gaining access to mandatory scholarships and universities. The notional figure that we used in estimating is a figure of 190 so the hon Member can then put together the deduction from 263 is over 70 more scholarships granted this year. Then, of course, the 10 per cent increase in all allowances plus the reduction of parental contributions which the hon Member has described was also a factor indeed because it also had an impact on the increase in the number of students. In any case when the Estimates were prepared in January this was before the electoral commitment of these increases in allowances, in the Budget in estimating this figure these increases in allowances and the lowering of parental contributions was not entirely taken into account.

HON S E LINARES:

I appreciate that but it was pointed out by my Colleague saying that how was it that if the Government had increased all these allowances and improved on all the grants, in the Estimates there was still a shortfall, less money provided for. I find it odd that if the Government are now going to provide all these things, that when they come to Budget they provide less money for these things?

HON DR B A LINARES:

In the Estimates we have not calculated the increase in discretionary grants which was seen by the Scholarships Award Committee to merit further increase.

HON J J BOSSANO:

Mr Chairman, at the time of the Estimates, in Appendix J on page 138, the amount provided in the previous year was £166,000 and in the Budget last year this was reduced by almost £100,000 for which at the time there was no explanation. Is it now going back to £175,000 which is of course close to the previous year's expenditure of £166,000? Is that the £100,000 the one they took away?

HON CHIEF MINISTER:

Yes, an ineffective attempt at imposing financial discipline.

HON J J BOSSANO:

Can I ask, on the mandatory side, the £300,000 of course is on the contribution that we make to what is broken down in Appendix J. Mr Chairman, the amount in grant actually was £600,000 but I take it that £300,000 is not in fact all grant, is it? It is not that the grants have gone from £600,000 to £900,000?

HON S E LINARES:

In the explanation it says more grants given rather than the increases. What we are saying is that in the explanation it just had one, therefore that is why we are clearing it. Is it that there are more grants rather than the increases that have been announced?

HON CHIEF MINISTER:

Mr Chairman, I cannot give the hon Member the amount in figures but I can give it to him in the number of students. These figures accommodate 32 additional students.

HON J J BOSSANO:

As I understood it, the Minister said that the figure that had been pencilled in the Estimates was on the assumption of 190 mandatory scholarships.

HON CHIEF MINISTER:

Mandatory is 154 as opposed to the 186 which materialised. This is as a result of the fact that the Financial Year comes before the university year which comes later in June. Then the discretionary, they budgeted for 40 and gave 77.

HON J J BOSSANO:

The £300,000 on the Mandatory, when we looked at the figure last year in Appendix J, there appeared to be a peculiarity in that the tuition fees were going up from £325,000 to £412,000 even though the scholarships were coming down from £623,000 to £600,000, which is the question my Colleague was trying to get at, presumably the £300,000 involves increases in a number of these subheads not in the new scholarships to be awarded heading. Are we right? Is it that £300,000 is partly for new scholarships and that there is also more in rail fares and more in tuition fees which one would expect. Do we have a breakdown of that?

HON DR B A LINARES:

The 10 per cent increase in allowances also reflects on the increased number of grants awarded.

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

Head 2 Employment and Consumer Affairs

HON J L BALDACHINO:

Mr Chairman, on employment and consumer affairs, have the Government got a breakdown by how much has been overspent on training and vocational cadets, giving a breakdown for both?

HON CHIEF MINISTER:

I did give this information earlier but I am very happy to give it to the hon Member again. Overspends: Vocational and Post Graduate Courses £200,000; Civil Service Training £80,000; Maritime Courses £65,000; Cammell Laird Training School £60,000 and remuneration from nursing trainees £45,000. That is on the training side. The Vocational Cadets the scheme for JBS to employ apprentices comes out of the School Construction Training Centre and costs £200,000 and social insurance provision for trainees costs £150,000.

There was a saving, an underspend, in the Construction Training Centre of £185,000. In the wage subsidy scheme there was an underspend of £35,000.

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

Head 4 – Public Services, Environment, Sport and Leisure

HON J C PEREZ:

In Head 4, Technical Services. I think the Chief Minister said that the extra £200,000 for the disposal of refuse was like 50/50 in respect of disposal of normal refuse and disposal of medical refuse. Can I clarify, now that he has told the House that the ownership of the incinerator is Europa Incinerator Ltd, whether in the same way that payments were made from the recurrent expenditure to In-Town these payments go through Europa Incinerator Ltd and then they pay the staff and pay the contractors that dispose of refuse? Or are these contracts directly with the Government? And could I ask whether on the two contracts if there are two or one whether it is a review of the contract for the removal of refuse from Gibraltar that has incurred this year's extra £200,000?

HON CHIEF MINISTER:

That is to the contractor who is removing the refuse. The arrangements with the Los Barrios tip are made directly by the Government. There is no intervening party there. It is a direct arrangement and we are using the incinerator tip as the tip to which refuse is taken in the first place and then from which it is carted away but these are financial arrangements directly between the Government and the incinerator. I cannot tell the hon Member..... the first part of his question was whether..... I suppose he means whilst the refuse incinerator was up and running. Of course it is not up and running now and therefore there is presently no disposal of refuse expenditure being channelled through Europa Incinerator Ltd or its managers except pay and the 15 per cent cost.

HON J C PEREZ:

So, similarly with the boilers, this is not an expenditure which is directly paid. The hire of the boilers is not something that the Government have done directly, they pay Europa Incinerator Ltd and they hire the boilers and they enter into the contractual arrangements? Or are we saying that only the pay element goes to Europa Incinerator Ltd for the payment of the staff that is there and the Los Barrios exercise is a direct payment by the Government and the boilers as well? I am asking because I found it strange that the contractual obligation by Lyonnaise was to pay water production into the company and that the expenditure should be divided into expenditure by Government and expenditure by the company. It does not seem to me to be a very neat exercise in accounting.

HON CHIEF MINISTER:

Mr Chairman, I cannot tell the hon Member how the Accountant-General was going to deal with this because the Accountant-General deals also with the accounts and the bookkeeping of Europa Incinerator Ltd. I suppose as we have not yet come to the end of the Financial Year, either of the Government or of Europa, I do not know if all of these decisions have been made. Certainly, the employees are employees of Europa Incinerator Ltd and certainly the Government are injecting into Europa Incinerator Ltd the money for the wages and the percentage management fee for the people that have always been there. The rest of it has got nothing to do with Europa. The contract with Lyonnaise is the Government. It is the Government's obligation to deliver water to Lyonnaise, not Europa's or indeed even In-Town before. Under the contract it is a Government obligation. The hon Member may think that the Chief Minister is wrong but what he transferred to In-Town was the benefit but not the obligations under the contract. I suspect the hon Member's memory may be failing him.

HON J C PEREZ:

I think the Chief Minister's memory is failing him.

HON CHIEF MINISTER:

Then he forces me to make a clarifying statement in the House since I cannot let the record lie as he has left it. I will make a clarifying statement in the House on the matter. But to deal with the question that the hon Member is raising substantially, the payments are being made by the Government, for the hiring of the boilers, for the running costs of the boilers et cetera. It is all an interim operation whilst the future of the incinerator is resolved, whilst the Lyonnaise distiller was built. It is an interim holding arrangement.

HON J C PEREZ:

The running of the boilers, has that been contracted by the Government to Lyonnaise or to another company?

HON CHIEF MINISTER:

Yes.

HON J C PEREZ:

By the Government to Lyonnaise, so the Government are paying for the hire of the boilers and Lyonnaise have installed and are running the boilers.

HON CHIEF MINISTER:

That is exactly how it works. It is actually being done on the ground by Lyonnaise but the Government are paying the cost. The £700,000 actually also includes the salaries of the employees in Europa. The £700,000 is not just the cost of hiring and running the new boilers. It also includes a provision for the cost of the salaries of the employees at Europa Incinerator Ltd.

HON J C PEREZ:

Is it that the employees that are idle in the incinerator as a result of the non-operation of the incinerator, have been transferred from there to run the boilers for this period? Or is it new people that have been recruited for the running of the boilers?

HON CHIEF MINISTER:

I do not know whether in addition they may be doing some very minor safety-related maintenance work on the refuse incinerator but all that they are engaged in is with the boilers. The incinerator plant itself is not operational and therefore they are engaged only in relation to the water production side which is based on these two boilers plugged in to the incinerator's desalination plant.

HON J C PEREZ:

So what we are saying is that part of the cost of the pay of the people in Europa is being charged to this new subhead (d) because they are involved in the operation of the boilers and would be deducted from the main area because if it is the same people either they appear twice or they must be charged differently?

HON CHIEF MINISTER:

Mr Chairman, I will have to come back to the hon Member. It is a very specific question and I would like to give him a factual answer. I will come back to him this afternoon on the telephone if we are not still sitting.

HON J C PEREZ:

Mr Chairman, on subheads 5 and 9 on electricity, can the Chief Minister say whether the whole increase is purely as a result of the increase in fuel prices or is it that accompanied with the increase of fuel prices there is an increase in generation as well? That is to say the level of generation has simultaneously increased and this is incurring or is the 40 per cent odd purely increase in fuel. On the second one we have already heard that part of the cost is for more electricity being bought from OESCO, but is this due to an increase in generation? Are we selling more electricity as well?

HON CHIEF MINISTER:

Mr Chairman, I understand this question to mean that the hon Member understands that we have bought extra electricity from OESCO so therefore I understand his question to mean has our own generating station also generated additional electricity.

HON J C PEREZ:

What I am saying is that on both counts, we are saying fuel has increased but other than the fuel increasing are we producing with both generating stations and selling the same electricity as last year which is costing us 40 per cent more or are we producing more electricity which would give the extra amount in fuel a different percentage per unit.

HON CHIEF MINISTER:

Mr Chairman, there is a small increase. There is a year on year increase in electricity consumption but the information that I have from the City Electrical Engineer is that the additional funds required is caused solely by the increase in fuel prices which means that he must have incorporated the projected increase in the original estimate so there has not been an increase above that increase which he projected and therefore both in respect of the projected increase and the original quantity there has been an increase in the price of fuel. There has not been more of an increase than was provided for in the estimate.

HON J J BOSSANO:

In relation to the last point that was made, is that true also of OESCO?

HON CHIEF MINISTER:

No.

HON J J BOSSANO:

So in the case of OESCO in fact the amount projected at the Budget in terms of the quantity of electricity purchased was less than what we have actually purchased, is that correct?

HON CHIEF MINISTER:

No, in the case of OESCO we have purchased around 3 per cent more electricity than was provided for in the Budget. That is worth £240,000 out of the £1.7 million that has been paid to OESCO.

HON J C PEREZ:

Have we reached the stage where the unit of electricity has come down as a result of purchasing more units from OESCO? There is a clause in the contract that lowers the price if the amount exceeds a volume.

HON CHIEF MINISTER:

Alas I understand that we have not reached that position and that the price is still on the upward trend of the graph. We are still in that part of the formula that takes it up.

HON J C PEREZ:

What formula that takes it up? The only formula that takes it up is fuel prices but not anything else. The same formula that has existed from the beginning.....?

HON CHIEF MINISTER:

The volumes have not yet reached the one that provides for a lower rate for the volume.

HON J C PEREZ:

Given that the last Annual Report of GBC tabled in this House in 1997/98 which was tabled in January last year, is the deficit accumulated over a number of years or is the deficit only in respect of the last year, in respect of the £260,000. Certainly, we have no way of knowing to what extent the projections of raising revenue by GBC have failed given that the information is obviously not available. Given that it is £260,000, as I understand it for 1999/2000 and another £250,000 for 2000/2001, is it that the annual subvention will now increase by £250,000 every year given that the cost of employing people is there and people have already been employed and the expectations on the revenue side continue to be zero as the hon Member has indicated?

HON CHIEF MINISTER:

The way that the hon Member dealt with escalating costs at GBC when he was the Minister responsible was the introduction of a voluntary redundancy package which resulted in a reduction in the number of staff. It nevertheless does not detract from the fact that his instinct when he found himself in the same position as me was to cut people's jobs, not to take the extra cost of them on the chin. Whether we will pursue the same socialist inclination as the hon Member demonstrated at that time, the Government have not yet decided. What I can tell the hon Member now is that the Government are not willing to allow the cost of GBC to simply spiral upwards on an annual basis regardless of the commercial underlying position. The Government have been left with no alternative but to fund this because otherwise they will just run out of money. The Government funds GBC not against accounts but against cash needs. The Government have got no alternative, whilst GBC remains in its present format, but to fund. I think the fact that the GBC relaunch proposal has succeeded in delivering only the extra cost but not the extra revenue will certainly cause the Government to revisit the whole question of GBC's future. Of course, GBC has a future and a good future but whether it is a future in its present format or not I think needs to necessarily be revisited in the present financial circumstances.

As to the answer to the hon Member's first question, the £260,000 that was carried forward as at the end of March 2000 does relate to that financial year and I share the hon Member's view, implicit although not articulated, that the accounts of GBC are now well overdue. The Government regard it as a matter of concern. Of course, this is not a Government Department and the Government are not in a position to issue instructions. GBC is a statutory corporation, separate and independent of the

Government but funded by the Government. I can tell the hon Members that the Government are now extremely concerned about the delays in producing the accounts which I think at least reveal that there is a lack at GBC of the necessary accounting expertise sufficient in width and depth to enable all these issues to be dealt with. If this were an activity for which the Government had a direct hands-on responsibility then certainly we would have intervened long before now to procure delivery of the accounts. Having said that, there is something of a backlog in the Principal Auditor's Department which is now being resolved with additional resources. The hon Members will have noticed that there is some delay. There has been delay in the production of the Accounts of Gibraltar, there is delay in the tabling of the accounts of the Gibraltar Development Corporation and these are areas where we have to get on top of things. These accounts are taking too long to produce and to audit.

Head 4 was agreed to and stood part of the Bill.

HON MISS M I MONTEGRIFFO:

Mr Chairman, on the question of the contribution to the Gibraltar Health Authority, I have noticed under the Forecast Outturn for the GHA that there has been no money spent on student nurses when there was a provision of a figure of £180,000 provided in the Estimates. Could the Minister give an explanation about this?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

The answer is very simple. It was at the time the Estimates were prepared. The Health Authority were planning to account for the salaries of student nurses separately. They have now been submerged within the general Personal Emoluments salaries bill.

HON J J BOSSANO:

There has been no change in the revenue side then? The figure is still expected to be as in Question No 320 of 2001 which was the same as in the original estimate of last year. In fact, the extra provision that is required is entirely expenditure driven?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

As far as we are best able to ascertain at this moment in time yes.

Head 5 Social Affairs was agreed to and stood part of the Bill.

Head 15 SUPPLEMENTARY PROVISION

HON J C PEREZ:

On the Pay Settlements I took note that the Chief Minister said that there might be some money left over given that the retrospection element of the allowances and so on had not yet been totally calculated, but can the Chief Minister say whether this covers the Pay Settlement for all non-industrials or are there still some groups of non-industrials pending which have not been taken into account here? And could he state whether this is the final settlement for 1999 and 2000 given the expectation in some quarters that the final settlement has not yet been reached in respect, at least, of the year 2000 as I understand it?

HON CHIEF MINISTER:

Mr Chairman, I cannot speak for expectations nor for other quarters. As far as the Government are concerned, as we have said publicly and privately to employees, we consider that the 1999 and 2000 Pay Awards are settled. Obviously there are always individual groups with separate pay claims, not annual pay review related, and there is the usual batch of those but I cannot think of any group of non-industrials that has not yet had a pay award for 1999 and 2000.

HON J C PEREZ:

So, for example, the Port Department and the Customs have already settled as well?

HON CHIEF MINISTER:

I have spoken of awards. I am not sure that everyone has accepted the award or has collected the award but certainly as far as the Government are concerned the pay awards that it is willing to pay for these two years is settled and on the terms that are already published. The Government will not offer more in respect of either the 1999 or 2000 Awards than that which has been offered, quantified and made available to staff.

Head 15 was agreed to and stood part of the Bill.

The Schedule was agreed to and stood part of the Bill.

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

THIRD READING

HON ATTORNEY-GENERAL:

I have the honour to report that the Drugs Trafficking Offences Ordinance 1995 (Amendment) Bill 2001 with amendments; the Motor Fuel (Composition and Contents) Bill 2001; the Pollution Prevention and Control Bill 2001; and the Supplementary Appropriation (2000-2001) Bill 2001, 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.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House sine die.
Question put. Agreed to.

The adjournment of the House was taken at 12.50 pm on Monday 26th March, 2001.