GIBRALTAR

HOUSE OF ASSEMBLY

HANSARD

5th November 2001

(adj to 6th, 9th November; 3rd, 19th, 20th December)

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Sixth Meeting of the first Session of the Ninth House of Assembly held in the House of Assembly Chamber on Monday 5th November 2001, 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 R Rhoda QC - Attorney General
The Hon E G Montado, OBE - Financial and Development Secretary (Ag)

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon Dr J J Garcia
The Hon 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 30th April 2001, having been circulated to all hon Members were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

The Hon the Minister for Employment and Consumer Affairs laid on the Table the Employment Survey Report for the periods ended October 1999 and October 2000.

Ordered to lie.

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

(1) The Accounts of the Government of Gibraltar for the year ended 31st March 2000 together with the Report of the Principal Auditor thereon.

(2) The Gibraltar Broadcasting Corporation Annual Report 1999-2000 and audited accounts for the year ended 31st March 2000.

(3) Statement of Consolidated Fund Reallocations approved by the Financial and Development Secretary (No 17 of 2000/2001).

Ordered to lie.

ANSWERS TO QUESTIONS

The House recessed at 1.00 pm

The House resumed at 2.30 pm

Answers to questions continued.

The House recessed at 5.00 pm

The House resumed at 5.45 pm

Answers to questions continued.

The House recessed at 8.35 pm

The House resumed at 8.40 pm

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Tuesday 6th November 2001, at 9.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 9.45 pm on Monday 5th November 2001.

TUESDAY 6TH NOVEMBER 2001

The House resumed at 9.40 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 E G Montado, OBE - Financial and Development Secretary (Ag)

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon Dr J J Garcia
The Hon 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 R Rhoda QC - Attorney General

IN ATTENDANCE:

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

ANSWERS TO QUESTIONS (CONTINUED)

The House recessed at 11.40 am

The House resumed at 11.45 am

Answers to Questions continued.

The House recessed at 1.50 pm

The House resumed at 3.40 pm

Answers to Question continued.

The House recessed at 5.30 pm

The House resumed at 5.50 pm

Answers to Questions continued.

The House recessed at 7.40 pm

The House resumed at 7.45 pm

Answers to Questions continued.

ADJOURNMENT

The Hon the Minister for Trade, Industry and Telecommunications moved the adjournment of the House to Friday 9th November 2001, at 3.00 pm.

Question put. Agreed to.

The Adjournment of the House was taken at 8.20 pm on Tuesday 6th November, 2001.

FRIDAY 9TH NOVEMBER 2001

The House resumed at 3.05pm.

PRESENT:

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

GOVERNMENT:

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

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon Dr J J Garcia
The Hon 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

BILLS

FIRST AND SECOND READINGS

THE LEISURE AREAS (LICENSING) ORDINANCE 2001 (AMENDMENT) ORDINANCE 2001

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Leisure Areas (Licensing) Ordinance 2001, 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 may recall that in my Second Reading contribution at the time that the Leisure Areas (Licensing) Ordinance, then Bill, was being considered by this

House, I said that the Government would be studying lessons we might learn from implementing the Ordinance to see how it might be improved as required. In the short period of time that the 2001 Ordinance has been enforced, Casemates has, the Government believe, successfully established itself as an entertainment hub for Gibraltar as was the intention behind the project. Open air theatrical and musical events have abounded over the summer period. The success, however, had the effect of bringing to the fore the fact that the Ordinance, whilst successfully regulating indoor entertainment, completely failed to address the licensing of outdoor entertainment. This led to the rather unusual situation and anomaly whereby several licensing authorities continue to coexist at Casemates depending on whether an entertainment event is being held inside a café or in the square itself. In the case of a non-paying event no regulatory infrastructure exists at all. Against such a scenario the Government consider it prudent to streamline the entertainment licensing arrangements for the square. Hon Members will recall that the principal feature of the Ordinance was that all the various licences required at Casemates, whether it be Tavern, Food, Entertainment, Tables and Chairs, were transferred into the Leisure Areas Ordinance. What this Bill does is to amend sections 5 and 8 of the Ordinance, the effect of which amendments is to subject street performers in leisure areas to the licensing regime provided for in the principal Ordinance so whereas at the moment, under the Ordinance the entertainment aspect of the licence is done under the Leisure Areas Ordinance if the entertainment is inside the bar, if it is outside on the square it is still being left under the old regime and that was something that was overlooked at the time and if the distinction had been spotted it would have been included in the original Bill that was approved in this 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, when the original Bill was debated in this House the Opposition took the view that it raised serious issues of principle and we voted against it. That was in July. What this Bill seeks to do is to extend the hours to which we took objection then into another area, in this case outdoor entertainment. In particular section 8 of the original Ordinance of July, which we are now seeking to amend, is precisely one of the sections to which we took objection to then which is the one that makes it lawful for the Licensing Authority to whenever it is of the opinion that it is fitting for the preservation of good manners, decorum or the public peace to forbid the public acting, presenting or holding of any entertainment in a relevant establishment, that that particular section 8 (1) is now also amended to include the public highway as well.

Mr Speaker, on the basis of the arguments which we already rehearsed in July, the view of the Opposition is that this extends those same powers which are subjective to another area as well and therefore that it makes the Chief Minister's hobby as the Clerk of Works at Casemates and extends them to becoming its entertainment manager as well. On that basis the Opposition will be voting against the Bill.

HON CHIEF MINISTER:

Mr Speaker, I thought I had sufficiently explained to the hon Member back in July in this House, when we debated the Bill that this section to which he appears to have such grave objections, which he believes sets the Government up as the arbiter of good taste and good manners, the hon Member appears to think that the Government have introduced it into the Leisure Areas (Licensing) Ordinance. I told him at the time that this section is already and has always been in the Laws of Gibraltar under the Entertainments Ordinance and that in fact the version of it that we carried-forward from the Entertainments Ordinance into the

Leisure Areas (Licensing) Ordinance was actually a diluted version of what had been the Law of Gibraltar since 1953. The hon Member may believe as he so often demonstrates, that he has this inconsistency when we argue for example by Constitutional reform under the existing Entertainments Ordinance the section dealing with control in the public interest on grounds of good taste, good manners, decorum and public peace, the powers, the very same powers we have contained here are exercisable by the Governor who is one man. I do not know whether the Hon Mr Perez, who has now intervened from a sedentary position twice during this debate, finds it acceptable that one man should exercise control in the public interest in the interests of decorum, provided that that one man is the Governor but if that one man is the Chief Secretary of the Government of Gibraltar somehow a legal statutory power that has been acceptable for 40 years should suddenly become a human rights violation.

The hon Member could have argued, and I suppose could still argue if he wants to, that power might have been appropriate in 1953 and even though I recognise that it is contained in the Entertainments Ordinance, this would have been a good opportunity for the House to drop it and we would not have agreed with that, but at least it would have been an arguable approach, but what the hon Member cannot do is repeatedly make public statements in this House and outside of this House because I remember he repeated the same nonsense in an interview after the last debate, the hon Member cannot make public statements which suggest that the Government have introduced this section as new law now when all we have done as we did with parts of the other sections in the Leisure Areas Bill, is simply carried forward existing provisions from the Entertainments Ordinance into the Entertainment sections of this new Bill. I do not know if the hon Member has forgotten that or understands that but simply chooses to ignore it. He is free to take the view that that should not be the law. He is free to take the view that the law, if that has always been the law that it should cease to be the law. He could have introduced an amendment to delete the section at the time that we debated it, which he chose not to. He can do all of those things. What the hon Member cannot do is continue to mislead this House by implying that this is new law when it is not new law and I cannot do more than point that fact out to him. The hon Member may not want to believe me when I tell him it is existing law, but at least the fact that I point it out to him and that I assert to him that it is not new law should at least encourage him to refer to those eleven black books that the taxpayer has placed before him, called the Laws of Gibraltar, at least to check if what I am telling him is true. Therefore, once again the hon Members are voting against this Bill on completely false premises. They are voting against this Bill on the basis that the Government have introduced into it a terribly bad section of law which has always been the Law of Gibraltar, with the difference that whereas before the powers were vested in His Excellency the Governor, they are now vested in the Licensing Authority who is the Chief Secretary of the Government of Gibraltar. Unless, therefore, the hon Member finds one acceptable but not the other, his position should be that they are both unacceptable to him rather than to pretend that it is now unacceptable to him if before it was not.

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 A 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 E G Montado

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

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE TRANSPORT OF DANGEROUS GOODS ORDINANCE 2001

HON H A CORBY:

I have the honour to move that a Bill for an Ordinance to transpose into the Law of Gibraltar the provisions of Council Directive 94/55/EC on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road and Council Directive 96/35/EC on the appointment and vocational qualifications of safety advisers for the transport of dangerous goods by road, rail and inland waterway, be read a first time.

Question put. Agreed to.

SECOND READING

HON H A CORBY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this short Bill implements the directive concerning the International Carriage of Dangerous Goods by Road known as AVR from its title in French. The directive simply applies to the United Nations agreement drawn up by the United Nations Economical Commission for Europe across the EU. It also implements the directive for safety advisers in relation to the transport of dangerous goods. Although it relates to transport, the prime purpose of the agreement is in respect of health and safety.

The directive itself and the agreement are relatively short and simple as is the Bill. The meat of the matter is contained in Annexes A and B of the Agreement. This runs to about one thousand pages of closely-written text containing the list of dangerous goods, methods of packing them, labelling, vehicle construction, equipment and operation. The House will be familiar with the orange plates on the back of, for instance, petrol tankers which carry various numbers and signs. These are part of the AVR. Rather than copy out the full text of Annexes A and B which are themselves amended every two years or so to reflect changing conditions and advances in technology, the Bill simply refers back to them. The essential points are that when involved in international transport of dangerous goods the driver must be competent and carry a certificate of training. The vehicle must be approved and the goods must be listed in the transport document. The certificate in respect of the driver and vehicle can be given by a competent authority. The Minister is given power in the Bill to nominate the competent authority in respect of Gibraltar. Because of the huge majority of international transport of dangerous goods in Gibraltar this is only incoming rather than outgoing. The effect of the Bill is likely to be minimal and since all other EU States have already implemented the

directive, in practice any outgoing transport must already comply with the rules. However, the Factory Inspectors in Gibraltar will now have legislative power backing to ensure that any incoming vehicles comply with the rules.

The Safety Advisers Directive is separate but connected. Essentially, it provides that any transport undertaking involved in the carriage of dangerous goods must have on its staff or available to it a trained Safety Adviser holding a Certificate of Training by a recognised authority. This is the responsibility of the undertaking. However, the competent authority which issues a certificate for the vehicle and the driver will not issue those certificates unless the Safety Adviser is in place. Let me give a practical example of how this works. A petrol tanker registered abroad comes in from Spain, it must have the relevant certificates in respect of the driver and the vehicle, the transport document describing the goods and show the appropriate orange plate. Customs Officers, Factory Inspectors and others may inspect the documents and the vehicle to ensure that all is present and correct. If there is any discrepancy the vehicle might be sent back or refused entry and the discrepancy will be reported to the appropriate national competent authority who will take action to correct it. The converse is where the vehicle registered in Gibraltar carries dangerous goods for another destination in the EU. Once again it must carry the relevant documents issued by a competent authority and so on. The practical effect of this Bill is simply to put on the legislative basis what happens in practice and to enable Gibraltar to cross off some apparent unimplemented directives from the list. I commend the Bill to the House.

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

HON J C PEREZ:

Mr Speaker, let me say first that given the grave problems facing Gibraltar it seems a bit of an anti climax to be discussing today matters of this issue particularly in the context of the application of EU law when there are EU rights that ought to be applied to Gibraltar and are being withheld for reasons that we know best. On this occasion it is an EU directive which is to protect workers and to protect our citizens and it is most welcome that we should be doing it and we shall support it. Let me say, however, that although the Minister has said that there is a minimal application to it in Gibraltar, I would suppose that that minimum is contained to the transportation of dangerous goods by road unless, of course, we are revealing here the secret plan of the Chief Minister on public transport and we are now going to have inland waterways and railways all over the place. It might be an indication of what is to come, or we might be using the 10 metre deep sewer as the waterway for the transportation of goods which I doubt very much. But, joking apart, the Ordinance binds the Crown and I would presume that that means that it binds the Ministry of Defence in the transportation of explosives and weaponry whenever that is necessary for the ammunitions to be moved from one area to the other and it is most welcome, although of course there are powers in the Ordinance for the Transport Commission to grant permission for a single journey and one ought to be able to monitor that to see that a single journey does not reoccur on so many occasions that there is in de facto a breach of the regulations because single journeys occur in distant parts.

The other thing I would like to take up with the Minister is the question..... I think he talked about the Health and Safety Officers being now the people that would be able to monitor the situation, whereas the Ordinance under Safety Advisers specifies that the undertaking involved, that the undertaking itself that is involved with the loading or unloading of the dangerous substances being transported are the ones..... the cost of the Dangerous Goods Adviser is borne by them and then the

Government have an authority to give the certificate to the Safety Officer or to the Safety Adviser as I understand clause 6 as it is expressed in the Bill. Perhaps the Minister could explain that. Other than that we have no difficulty in supporting the Bill.

HON CHIEF MINISTER:

In respect to the Ministry of Defence, I can confirm to the hon Member that the Crown means the Crown in all its Departments.

HON H A CORBY:

Mr Speaker, as far as the issuing of the certificates are concerned, these are people who have taken a course on it and have a certificate to say that they can inspect the goods and that they are ready for transportation, that the driver is trained and also that the vehicle is in condition. These are the people who give the certificates either in the country of origin or here in Gibraltar. The Health and Safety and Customs are only responsible to see that the documentation in as far as the driver and the vehicle is worthy and has the certification.

HON J C PEREZ:

The confusion I have, Mr Speaker, is that the Bill says that the dangerous goods Safety Adviser that is involved in the transport of dangerous goods is appointed by the undertaking involved and then there is an authority put by the Minister to give the proper certificate to that dangerous goods Safety Adviser. That is how I read it and I thought that the Minister said that the Dangerous Goods Safety Adviser would now be the Safety Officers of the Government. I think perhaps for clarification purposes the Health and Safety Officers of the Government are the ones that will give the certificates to the Dangerous Goods Adviser employed by the undertaking, is that what the Bill is trying to reflect?

HON H A CORBY:

No, Mr Speaker. The Bill states that the adviser is the person that gives the certification. It is only when they enter Gibraltar that the safety people and the Customs look at the documentation, which the Adviser has already certified as good, to see that everything is in place.

HON J C PEREZ:

If the Minister would care to see clause 6(1), it says "*an undertaking involved in the transport of dangerous goods.....*", an undertaking meaning "*company*" or whatever.... "*shall appoint a person to act as Dangerous Goods Safety Adviser*". So the Dangerous Goods Safety Adviser is appointed by the party that is involved in transporting the dangerous goods and therefore it is paid for by that company, the cost is borne by the company. Therefore, the certificate for the Dangerous Goods Safety Adviser has then to be given by the body that the Minister nominates.

HON H A CORBY:

Yes.

HON CHIEF MINISTER:

In section 6(2) companies or transporters of dangerous goods may not appoint as a safety adviser someone who is not certificated to be appointed as a Safety Adviser and that appointment as a Safety Adviser has got to be effected under the Safety Adviser Directive 96/35/EC which regulates who is qualified to be appointed. There is a separate directive referred to in the Bill "The Safety Adviser Directive" which regulates the appointment and vocational qualifications of Safety Advisers and no one can be appointed as a Safety Adviser unless they are

certified under that directive by the other authority to which the hon Member has referred.

Question put. Agreed to.

The Bill was read a second time.

HON H A CORBY:

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

Question put. Agreed to.

THE MISLEADING AND COMPARATIVE ADVERTISING ORDINANCE 2001

HON H A CORBY:

I have the honour to move that a Bill for an Ordinance to repeal and re-enact the Misleading Advertising Ordinance 1993 as amended so as to transpose into the law of Gibraltar European Parliament and Council Directive 97/55 amending Council Directive 84/450 relating to Misleading Advertising so as to include Comparative Advertising, be read a first time.

Question put. Agreed to.

SECOND READING

HON H A CORBY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill is part of an on-going process on the part of this Government to enhance the fabric of our consumer protection infrastructure. The legislative activity in the development and implementation of consumer policy in recent years has been significant. A total of six Consumer Protection Directives have so far been transposed covering important areas such as door-step selling, unfair terms on consumer contents and now comparative advertising. This Bill repeals and re-enacts the Misleading Advertising Ordinance 1993 with amendments in order to transpose into the law of Gibraltar European Parliament and Council Directive 97/55. The Ordinance transposes Council Directive 84/450 on misleading advertising. Directive 97/55 builds upon Directive 84/450 so as to include within its scopes comparative advertising.

Implementing Directive 97/55 has necessitated a large volume of amendments to what is a short Ordinance, such that the Government have considered it more appropriate for the sake of good order to simply repeal the Misleading Advertising Ordinance and re-enact it with amendments. The Bill defines Comparative Advertising as an advertisement which either implicitly or explicitly identifies the competitor of goods or services offered by a competitor. Comparative advertising is permitted only when the conditions set out in the Bill are met. Under current Gibraltar law there is no general prohibition on comparative advertising although it is subject to a number of controls, in particular, use of a trade mark in comparative advertising is allowed under section 10(6) of the Trade Marks Act 1994 as applied by the Trade Marks Ordinance provided that it does not take unfair advantage of and is not detrimental to the distinctive character or repute of a competitor's trade mark. This is in line with the provisions of the directive. The Bill follows the practice established in the Unfair

Terms of Consumer Contracts Ordinance whereby persons having as their sole or principal aim the promotion of interests of consumers may apply to the Minister to be designated as capable of considering complaints from consumers about misleading and comparative advertising. Following the consideration of such complaints designated persons may bring an action for an injunction to prevent the publication or continuous use of the offending advertisement. 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, the Opposition welcomes measures taken to protect the consumer in Gibraltar but consider that the manner in which the Government have chosen to transpose the directive can have the effect of weakening the rights of consumers as they existed in the 1993 Ordinance as individuals rather than strengthening them. The Bill seeks to replace the 1993 Misleading Advertising Ordinance so as to include within its cloak the Comparative Advertising Ordinance. The 1993 Ordinance transposed a 1984 directive on misleading advertising and the Ordinance before the House today seeks to amend the Ordinance passed by this House in 1993.

Mr Speaker, whilst most of the Bill follows the directive closely, the Opposition is not happy with the terms of section 5 which allows for the Minister to designate a person or a group of people who have, in his opinion, the sole or principal aim in the promotion of the interests of consumers. A designated person is then tasked with considering complaints that an advertisement is contrary to the provisions of this Ordinance and with bringing legal proceedings for an injunction. I will read out section 3(1) of the 1993 Ordinance which says under the heading "*Application for Order restraining misleading advertising - a person whether or not he has suffered or is likely to suffer loss or damage as a result of misleading advertising may make an application to the Supreme Court for an Order of the court directing any person who in Gibraltar and whether on behalf of himself or someone else is engaging in misleading advertising or who in the opinion of the court is about to engage to cease from so doing or not to do so as the case may be*".

Mr Speaker, the view of the Opposition is that whereas previously an individual could take legal redress directly, the Bill brought before this House gives that right to a designated person or group of people nominated by the Minister. In the same way as the 1997 directive amends the 1984 directive, only to include comparative advertising within its scope, it is the view of the Opposition that this Bill should simply have amended the 1993 Ordinance in the same way without introducing the concept of the person designated by the Minister as a filter through which applications go or do not go to court as they see it fit or as they deem possible. The Minister has already said that that would have entailed a large number of amendments. From having studied the two directives, it does not seem to be such a labour intensive job as that suggests.

Mr Speaker, I would welcome an explanation from the Government as to why the route they have chosen is the route of the Unfair Terms in Consumer Contracts Ordinance and not the route in the Misleading Advertising Ordinance of 1993 which we are repealing and re-enacting. We would also be grateful if the Minister could tell us whether under the Unfair Terms in Consumer Contracts Ordinance any person or any group has actually been designated to date. That Ordinance dates back to 1998, we would like to know whether any such group or person has been designated in the intervening timescale. As presently drafted, Mr Speaker, and for those reasons the view of the Opposition is that the Bill takes away rights from consumers as individuals to take this course of action and we will be voting against it.

HON CHIEF MINISTER:

Mr Speaker, I cannot tell the hon Member why there has been a change in the procedural route for relief. Certainly there has not been, as far as I am aware, a policy decision of the Government and therefore what we will do is accept the hon Member will either vote against or abstain in the Second Reading and I will give him a fuller explanation at the Committee Stage. If the explanation that I seek and obtain is not persuasive of me and then the Government then we may well revert but I do not have any information. I was not aware that there was this new choice made in the context of what has been explained to me as a repealing and re-enactment. If what they have done is change the mechanics of the original Bill then it is not a repeal and re-enactment, it is a repeal, amendment and re-enactment which is not what I am aware of as being the position and I believe that the Minister is under the same impression. Therefore, we will not delay the Second Reading, this is, at the end of the day, just a debate on principle. I believe that that matter can be left for the Committee Stage and what we will do is that we will leave this Bill and not the Transport one that we had been intending to leave on the agenda, we will leave this one and return to it at a later date in Committee when I am able to provide the House with the information that it has sought.

HON J J BOSSANO:

Mr Speaker, we are grateful for that contribution. Can the Government then, in looking at this, look at the question of whether in the light of what we have said that at the moment with the law that is being repealed in 1993 an individual can take action without having to go to complain to somebody. The actual directive says that the law of the Member State must provide for legal action in respect of the persons that are, under that law, determined to have a legitimate interest in prohibiting the misleading advertising. Effectively, what the 1993 law does is to say everybody in Gibraltar has a legitimate interest. What this law does is to say only persons that have persuaded the Minister that their sole or primary role is consumer protection have a legitimate interest. The point I am making is in terms of Community law, it is established that in giving effect to Community directives, it is not permissible to use the directive bringing less protective measures than exist under national law. We have nothing at all giving effect to the directive which in this restricted sense is one thing, but if we have a clause that gives the legal right to complain about a misleading advert to everybody in Gibraltar and we utter it in the context of giving effect to a new directive limited to less people then I do not think we are acting consistent with what I have seen in the past where invariably it says that Member States may have wider protection than the minimum required to comply with the directive and that the Member State should not use a directive to actually reduce the.....

HON CHIEF MINISTER:

Would the hon Member give way? Mr Speaker, I am not sure that he is right. I accept that I am not aware that the Government's intention was to bring about the changes that they have identified. That is the point I intend to look into and refer back to the House at Committee Stage. But on the point that he is making a directive is a minimum standard, we can always do more than but if one had a law which does not, which as a matter of domestic policy gave more, one can if one wants to, it is not what the Government have intended to do, but could, it is not wrong, as a matter of domestic choice to say "I repeal the law that gave more than the European Union Directive required me, as a matter of domestic legislative choice, policy, I claw back that generous piece of legislation and I replace it with a Bill that does nothing more than deliver the minimum that I am required....". One is perfectly able to do that. The fact that the Government have legislated more than is required does not mean that they are not able to repeal that and replace it with something that gives less so long as the less is not less than the directive's requirements. I agree that it is unusual to use the occasion of the implementation of a directive to achieve a secondary purpose

when that secondary purpose actually is to reduce the level of protection in the very area in which the directive..... I think there is no technical objection in terms of the legislative process to doing that. This House can repeal any Ordinance that it wants to repeal and replace it with more, less or something different of the same degree. I do not think there is a legalistic or technical objection but it is certainly not what the Government think they are doing here in this case and certainly not what the Government were intending to do. That is the point upon which we will come back.

HON J J BOSSANO:

In the context of that let me say that the 1993 one was also implementing a directive, it was not purely a domestic thing.

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

The Bill was read a second time.

HON H A CORBY:

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

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 Leisure Areas (Licensing) Ordinance 2001 (Amendment) Bill 2001

2. The Transport of Dangerous Goods Bill 2001.

THE LEISURE AREAS (LICENSING) ORDINANCE 2001 (AMENDMENT) BILL 2001

Clauses 1 and 2 and the Long Title

Question put. The House voted:

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

The Hon H A 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 E G Montado

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

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

THE TRANSPORT OF DANGEROUS GOODS BILL 2001

Clauses 1 to 3 - were agreed to and stood part of the Bill.

Clause 4

HON H A CORBY:

In section 4(2) insert after the words "*prohibited by*" by the following "*or which do not comply with the conditions laid down in,*".

After section 4(2) insert new subsection (3) as follows:
"*(3) The certificates and authorisations required by Annexes 'A' and 'B' shall be issued by such person or persons as the Minister may deem appropriate subject to the conditions required for such issue being complied with*".

Clause 4 - as amended, was agreed to and stood part of the Bill.

Clause 5 - was agreed to and stood part of the Bill.

Clause 6

HON J C PEREZ:

Mr Chairman, I think there is a spelling mistake in section 6(3) where it should say "designate one" and not "designate on", there is an "e" missing, perhaps we might take the opportunity of amending it.

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

Clause 7 - was agreed to and stood part of the Bill.

New Clause 8

HON H A CORBY:

Mr Chairman, I move that a new clause as follows be included:

"Offences

8. A person who transports dangerous goods or otherwise than in accordance with the conditions laid in Annexes 'A' and 'B', or whose transport is prohibited, is guilty of an offence and liable on summary conviction to a fine up to level 5 on the standard scale".

New Clause 8 - 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 Leisure Areas (Licensing) Ordinance 2001 (Amendment) Bill 2001 and the Transport of Dangerous Goods Bill 2001, have been considered in Committee and agreed to with amendments. I now move that they be read a third time and passed.

Question put.

THE LEISURE AREAS (LICENSING) ORDINANCE 2001 (AMENDMENT) BILL 2001.

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 A 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 E G Montado

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

The Bill was read a third time and passed.

The Transport of Dangerous Goods Bill 2001 was agreed to and read a third time and passed.

PRIVATE MEMBERS' BILL

THE NATWEST OFFSHORE (TRANSFER OF GIBRALTAR UNDERTAKING) ORDINANCE 2001

HON K AZOPARDI:

I have the honour to move that a Bill for an Ordinance to make provision for and in connection with the transfer of the Gibraltar undertaking of NatWest Offshore Limited to The Royal Bank of Scotland International Limited, 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, it is a well known fact that RBS bought out NatWest last year in the UK and that has consequences for the Gibraltar operation. Before I go into the details of the Bill in the presentation of the general principles, perhaps a bit of background would be helpful for hon Members.

The Royal Bank of Scotland International is a Jersey-incorporated bank which has branches in each of Jersey, Guernsey and the Isle of Man. NatWest Offshore is an Isle of Man incorporated bank with branches in Jersey, Guernsey, Isle of Man and Gibraltar. It also trades in the Isle of Man as the Isle of Man Bank. There has been discussions in all jurisdictions and the initiative is being brought forward in all four jurisdictions on a similar basis. The intention really is for the banking business of NatWest Offshore conducted in the name NatWest in Jersey, Guernsey, Isle of Man and Gibraltar to be transferred through legislation passed in all four of those jurisdictions to Royal Bank of Scotland International with the enlarged RBSI continuing, however, to operate in each of these jurisdictions using NatWest as a trading name as well as continuing its existing business as RBSI if it conducts business in those jurisdictions as RBSI. The transfer of the NatWest Offshore business in Gibraltar to RBSI necessitates RBSI obtaining a Banking Licence in Gibraltar and post-merger the Branch in Gibraltar will technically be RBSI trading as NatWest. NatWest Offshore will retain all the business presently conducted by it under the name "Isle of Man Bank" in the Isle of Man but will change its name to the Isle of Man Bank Limited and will thereafter continue to trade in the Isle of Man as Isle of Man Bank. As a precursor to the transfer of the NatWest Offshore business to RBSI, it has been proposed and I understand that it is being undertaken for the transfer of NatWest Offshore to be effected from its current immediate parent company, a holding company incorporated in Holland, to be a direct subsidiary of the RBSI Limited with RBSI Holdings being the ultimate owner of RBSI. NatWest Offshore will therefore become a subsidiary of RBSI Holdings at some point with a share transfer agreement being effected between RBSI Holdings and the Dutch holding company of NatWest Offshore. NatWest Offshore in turn is the parent company of a number of operating companies including Coutts in various jurisdictions as Jersey, Guernsey and the Isle of Man and similar restructuring is being conducted in those jurisdictions to consolidate the operations effectively.

Mr Speaker, the Bank is of course seeking the approval of all regulators in the relevant jurisdictions. There have been discussions, I know, with the FSC in Gibraltar, the Isle of Man Financial Supervision Commission, the Guernsey Financial Services Commission and the Jersey Financial Services Commission which are the current regulators of the RBSI.

Section 2 is the fundamental section of the Bill transferring the Gibraltar Undertaking of NatWest Offshore to RBSI with the transfer effective date intended in all jurisdictions to be the 1st January 2002 which is the date of transfer proposed in all legislation in the Isle of Man, Jersey and Guernsey. The transfer undertaking is to be carried out through the medium of a branch with RBSI doing so in all jurisdictions as I have explained before. Section 3 spells out the basic provisions transferring property from NatWest Offshore to RBSI, defining property very widely. I should say also by way of background that this Bill is modelled on the other Private Members' Bills that have been put to the House before. The case of Abbey National restructuring it and transferring it, an undertaking as a result of internal consolidation and restructuring.

Section 4 is an important section excluding certain property transfer. There are four types of excluded property. The first is

in relation to operational land of NatWest Offshore. The second is in relation to licences under the Financial Services Ordinance and Banking Ordinance. The third is in relation to the pension arrangements of the employees at NatWest Offshore and the fourth is description of excluded properties, properties governed by the law of the country other than Gibraltar. This latter exclusion in reality is no more than a statement of an existing rule of international law which is inserted as a result of that.

Section 5 is technical provision dealing with documents which currently refer to NatWest Offshore.

Section 6 spells out the position about existing accounts with NatWest. They will continue as accounts with RBSI subject to the same rights and obligations as before the transfer, including of course, any rights the customer had with the bank.

Section 7 covers a number of specific items which though dealt with in general terms, call for specific mention in that section. Inter alia, there is that provision to make charges and conduct business by reference to existing scales.

Section 8 is a technical provision ensuring the continuation on or after the change of the date of the operation of the Banker's Books Evidence Act 1879 which is the legislation that oversees the business of banking generally in the relevant jurisdictions like Gibraltar.

Section 9 is an evidential provision which relates to documents which come into existence after the change of a date and section 10 provides for the payment of the Government expenditure in connection with the introduction and enactment of this Bill.

Mr Speaker, before I commend the Bill to the House there were several issues which I had and which I put to the Bank before the Government were comfortable about signalling our willingness to present this. One of the things that we wanted assurances about was the position on employment at the Bank and I have had a letter sent to me from the Chief Executive of the Royal Bank of Scotland International which he has agreed that I can disclose to the House which gives relevant information which is of interest to the House. One is that the proposed restructuring is not anticipated to give rise to any redundancies in Gibraltar. There may be a limited number of voluntary early retirements but I understand that they are not connected to the restructuring and indeed that they are optimistic that subject to organic growth there will be no requirement for any other redundancies. I asked them to confirm to me that they are in consultation with the relevant Unions as a result of the possibility of the transfer of undertaking the situation arising and indeed they confirm to me that UNIFI, the Staff Union representing the NatWest Offshore in Gibraltar will be fully consulted about the proposals and any staff implications. I believe that they are represented by Mr Montiel because I understand that the Bank have had discussions with him and that any staff contracts which as a result of legislation are transferred will remain on the terms of conditions applying prior to the legislation. They also confirmed and I will just read that paragraph from the letter because it is of relevance….. "that RBSI level of commitment to Gibraltar is not affected by the restructuring and indeed is strengthened by these proposals. The existing NatWest Offshore Branch in Gibraltar will continue to operate under the trading name 'NatWest' and the Royal Bank of Scotland (Gibraltar) Limited a joint venture between the Royal Bank of Scotland and Banco de Santander will also continue to operate in Gibraltar. In real terms there will be very little change for Gibraltar as all existing business currently conducted there will continue to be conducted in Gibraltar. Indeed, we would hope that after the restructuring both entities will continue to see growth in their respective businesses in Gibraltar". 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, the Opposition will be supporting the Bill. As the Minister has said it is a straightforward measure and it is something which has happened before. We welcome that the Banks do not anticipate any redundancies in Gibraltar and really there is not much more to say. We shall be voting in favour of the Bill.

HON K AZOPARDI:

I am grateful that the Opposition are supporting the Bill because I think it is just putting into effect the restructuring which is taking effect in all jurisdictions. As I read from the Chief Executive's letter I do not think it will have substantial detrimental effect on Gibraltar. Indeed, it will have no detrimental effect and we just look forward to the commitment of RBSI being strengthened in line with the Chief Executive's statement and I hope that indeed they do grow and that they take on further people and create jobs in Gibraltar.

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.

COMMITTEE STAGE

HON ATTORNEY GENERAL:

I have the honour to move that the House should resolve itself into Committee to consider the NatWest Offshore (Transfer of Gibraltar Undertaking) Bill 2001 clause by clause.

THE NATWEST OFFSHORE (TRANSFER OF GIBRALTAR UNDERTAKING) BILL 2001

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

THIRD READING

HON ATTORNEY GENERAL:

I have the honour to report that the NatWest Offshore (Transfer of Gibraltar Undertaking) Bill 2001 has been considered in Committee and agreed to, without amendments, and I now move that it be read a third time and passed.

Question put. Agreed to.

The Bill was read a third time and passed.

HON CHIEF MINISTER:

On a point of order. There have been public statements outside of this House and indeed statements inside this House about the giving of notice by the Opposition of a motion. The Government have not yet received a notice of that motion and I think in the public speculation on the matter I would welcome clarification from the Opposition Members whether that motion is being withdrawn or not.

HON J J BOSSANO:

No, it has not been withdrawn.

HON CHIEF MINISTER:

The reason why I ask, Mr Speaker, is that Government would normally adjourn the House to a date which was of convenience to our legislative programme given that we are now in Government business and that the effect of that might be that the hon Members' motion, which Government have no desire to delay, if the hon Members wish to proceed with it sooner rather than later will be then postponed to the end. If the hon Members wished to proceed with the motion sooner rather than later we could suspend Standing Orders and come back to debate that motion at some convenient date. Otherwise, my intention is to adjourn the House until Monday 3rd December because I have to bring a Bill to the House which is not ready and I cannot publish, I have to wait for it to be ready, print it and give seven days' notice. It is really a matter for the Opposition Members. We can suspend Standing Orders and take their motion sooner than that if they want to.

HON J J BOSSANO:

Mr Speaker, the motion of which I have given notice uses the only mechanism that is available in Standing Orders for [*Interruption*]
I gave notice to Mr Speaker of the motion, I do not give notice to the Government, I give notice to the House.

HON CHIEF MINISTER:

We have not yet been told.

HON J J BOSSANO:

I accept that Government have not been told. On the 5th November I wrote to Mr Speaker saying I begged to give notice that in accordance with Standing Order 51 I intend to move a substantive motion for the House of Assembly to review the ruling on the procedure for asking questions because my understanding of Standing Orders is that it cannot be reviewed any other way and that there is no appeal against such a ruling and that to challenge that ruling other than to seek a review of the question would be a contempt of the Chair. I am sure Mr Speaker would not want to suspend all of us. [*Laughter*]. Nevertheless, that is the procedure provided. Frankly, I think it is a matter that needs to be cleared up because we need to know where we stand in respect of future Question Times. There is no particular urgency from our point of view and we would see no need to come back especially to do this given that we want to know where we stand in terms of the strategy we adopt for future Question Times. If indeed it is the case as I have already made clear that if it is consistent with Standing Orders that the number of supplementaries can be limited then that can only result in the number of questions being increased in order that the number of supplementaries are consequentially increased. But as long as we have got the position cleared up before the next Question Time, there is no particular urgency from our point of view. We

just want to make sure that we know where we stand in accordance with the rules. We want to abide by the rules.

MR SPEAKER:

The motion was received by me but I was told there was no hurry. It will be circulated.

ADJOURNMENT

HON CHIEF MINISTER:

Although the hon Member has not actually said so but I interpret the Leader of the Opposition's words to mean that he is content for me to adjourn till 3rd December and therefore I so move the 3rd December 2001, at 10.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 4.20pm on Friday 9th November 2001.

MONDAY 3RD DECEMBER 2001

The House resumed at 10.40 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 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

ABSENT:

The Hon Lt Col E M Britto OBE, ED - Minister for Public Services, the Environment, Sport and Youth

IN ATTENDANCE:

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

DOCUMENTS LAID

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

Question put. Agreed to.

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 2001/2002).

(2) Statement of Improvement and Development Fund reallocations approved by the Financial and Development Secretary (No1 of 2001/2002).

Ordered to lie.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Wednesday 19th December 2001, at 2.30 pm.

Question put. Agreed to.

The adjournment of the House was taken at 11.50 am on Monday 3rd December 2001.

WEDNESDAY 19TH DECEMBER 2001

The House resumed at 2.30 pm.

PRESENT:

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

GOVERNMENT:

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 J J Netto - Minister for Housing

OPPOSITION:

The Hon Dr J J Garcia
The Hon S E Linares

ABSENT:

The Hon P R Caruana QC - Chief Minister
The Hon K Azopardi - Minister for Trade, Industry and Telecommunications
The Hon J J Holliday - Minister for Tourism and Transport
The Hon H A Corby - Minister for Employment and Consumer Affairs
The Hon Mrs Y Del Agua - Minister for Social Affairs
The Hon R Rhoda QC - Attorney General
The Hon T J Bristow - Financial and Development Secretary

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

IN ATTENDANCE:

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

ADJOURNMENT

The Hon the Minister for Education, Training, Culture and Health moved the adjournment of the House to Thursday 20th December 2001, at 9.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 2.35 pm on Wednesday 19th December 2001.

THURSDAY 20TH DECEMBER 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 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 Miss M I Montegriffo
The Hon Dr R G Valarino
The Hon J C Perez
The Hon S E Linares

ABSENT:

The Hon J L Baldachino

IN ATTENDANCE:

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

DOCUMENTS LAID

The Hon the Minister for Trade, Industry and Telecommunications 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 Minister for Trade, Industry and Telecommunications laid on the Table the Annual Report and Accounts of the Financial Services Commission.

Ordered to lie.

SUSPENSION OF STANDING ORDERS

HON CHIEF MINISTER:

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

Question put. Agreed to.

BILLS

FIRST AND SECOND READINGS

THE SUPREME COURT ORDINANCE (AMENDMENT) ORDINANCE 2001

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Supreme Court Ordinance to make a new provision for the payment of a fee upon the sale of any ship or cargo by order of the Court, 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. Hon Members will be aware that there has recently been in Gibraltar two fleets of ships for the purposes of being arrested on behalf of a claimant by the Admiralty Marshal and the Admiralty jurisdiction of the Supreme Court. The attraction of such activity to the Gibraltar jurisdiction is one that the Government consider is very worthwhile. Ship arrests in Gibraltar provide not just direct revenue to the Government through the court poundage system but indeed also provides much activity in Gibraltar for almost all sectors of the Port and the private sector whilst the ship is here under arrest. The principle objective of this Bill is to

create a framework which will make it more attractive for claimants, principally mortgaging banks, not just to use Gibraltar as a convenient arrest port with passing ships for which we have always done quite a lot of business, but indeed to be sufficiently attracted to the jurisdiction to divert ships from a long way away to Gibraltar in order for the advantages of this jurisdiction to be enjoyed by the litigants. When the second fleet of ships arrived, the Renaissance fleet, the bank involved with that case sought, before bringing the whole fleet back to Gibraltar an indication that there was some possibility of the poundage being reduced. Hon Members may be interested to learn that in the United Kingdom the poundage is 0.5 per cent when the value of the ship exceeds something very low, I think it is £100,000. We have a flat rate of 1 per cent but when one is talking about a large fleet of ships going for an aggregate of 250 or 300 million dollars, 1 per cent and saving 0.5 per cent or even saving a few decimal points, a few tenths of one per cent become the sort of factor upon which banks are capable of making a choice between one jurisdiction and the other. Indeed, an indication was given by the Admiralty Marshal that she would support an application to the court for the fee to be rebated, in this case, there is under very old Admiralty Rules a discretion on the part of the Court to rebate but not in circumstances which were clearly available in these situations. It talks about hardship, well, to what extent can a bank ever be the victim of hardship, and therefore rather than rely on any of that and in any case I do not think it would be the view that was taken that if there was to be a modification in respect of a revenue raising measure it should be provided for in this House on a standard basis rather than be allowed to vary from case to case in the discretion. This is not something that goes into the administration of justice this is simply a question of how much revenue the Crown derives for providing the jurisdiction in which this legal process can take place.

Against that backdrop, the Government bring this Bill to the House. There are several things that I would point out to the hon Members, the first is in clause (1), the citation. Hon Members will see that the coming into operation of this Bill is reserved until Her Majesty signifies her pleasure thereon by public announcement in Gibraltar and the reason why that is necessary in this case is that under section 4 of the Admiralty Court Act of 1840 which is still extant not just in Gibraltar but indeed in all overseas territories, requires the signification of Her Majesty's pleasure to any alteration to the procedures or rules of the courts of the overseas territories in exercise of their Admiralty jurisdiction as opposed to their other types of jurisdiction, and that is so whether the procedures and rules are changed by the Chief Justice in exercise of his rule making power or whether it is brought about by primary legislation in the legislative assemblies of the overseas territories. The Bill has been submitted for the signification of Her Majesty's pleasure and we do not expect there to be a problem but there is a requirement of that section of that English Act that that procedure be gone through. Clause 2 of the Bill inserts a section 39 which in effect in subsection (1) provides for the fee payable, it is called in common parlance of the legal profession courts poundage, in other words the commission that the crown derives, the percentage of the sale value, the sale proceeds of the ship. Subsections (1) and (2) provide for the fees that will be payable when one just arrests one ship and that is it will remain the current 1 per cent where the value of the ship does not exceed £50 million and thereafter in respect of the excess over £50 million, the excess attracts a poundage at 0.75 per cent. Subsection (3) then makes provision for what are called fleet sales, that is to say where a claimant may have a mortgage for example over, as was the case of the Renaissance and the Abu Dhabi fleet, there was a claim over a fleet of seven, there is a specific regime to provide a reduction in the poundage so that we continue to attract such business as and when it arrives. The regime that it creates is that subject to meeting certain conditions in the definition of what is a fleet sale one aggregates the sale value of all the ships in that fleet so long as they are sold at the pursuit of the same party within a given amount of time of each other. That is regarded as a fleet sale. One adds up all the proceeds of sale as if they were just one ship, one adds them all up together and then one pays the following poundage. On the first £3 million of that aggregated proceeds of sale 0.8 per cent and on the excess over

£30 million it reduces to 0.6 per cent in respect of the excess the first £30 million always being at 0.8 per cent. There is a definition in the Bill of what is a fleet, there is a definition in the Bill of what is a total fleet sale price and subsection (5) then provides, hon members may not be aware that in fact arresting parties have to pay in effect 2 per cent not just 1 per cent, 1 per cent to the Government, to the Crown, as court poundage but then the Admiralty Marshal's Ship Broker who advertises the sale and tries to drum up support in the market for it, for amongst purchases, historically has also taken 1 per cent. This subsection provides that the fee payable by the Admiralty Marshal to assessors, brokers, appraisers upon the sale of a ship shall not exceed the amount payable to the Admiralty Marshal upon the sale of that ship under this section. In other words the broker cannot derive a larger commission, as so to speak, than the Crown derives from any one transaction. Subsection (6) renders the Bill retrospective in order to catch the Renaissance fleet it is made retrospective to the 1st November 2001 and subsection (7) repeals the existing part, item 7 of a schedule that there is in the Admiralty Practice Rules of 1989 which presently says that upon the sale of a ship or cargo by the Admiralty Marshal the fee payable should be 1 per cent. That is repealed and replaced by this piece of primary legislation. 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, the Opposition understand and are in agreement with what this Bill sets out to do. There is one area where we would like perhaps some information if the Chief Minister has it available and that is, he has mentioned the sale of the Renaissance ships and that that will now be covered by this legislation, we wondered whether he had available the expected revenue to the Government of that sale. The Opposition will be supporting the Bill.

HON CHIEF MINISTER:

I do have that information but it may take me a moment or two to extract it from my papers here and I wonder if he might let me give it to him at the Committee Stage? I have just got to tot up the aggregate and do the calculation, the figure that I have is before the amendment which I should have mentioned, I do beg the House's pardon, the amendment that I will be bringing because once the Bill had been drafted it had been spotted that as drafted I had presented my address on the second reading on the principles of the Bill on the basis of what the position will be once I have presented my amendment. As the Bill is presently printed it is not 0.8 per cent on the first £30 million and then 0.6 on the balance it suggests that it is 0.6 on the whole lot so that there is not and then to boot there is a misprint in Roman (iii) it says the same percentage as in Roman (ii), that would just be a typographical error. So I will be at the Committee Stage moving an amendment which will produce the situation that I have described in the Second Reading, namely that of the first £30 million of the fleet price is always at 0.8 per cent and the 0.6 will apply to the whole excess no longer divided into (ii) and (iii), the whole excess over £30 million will then attract 0.6 but the first £30 million always at 0.8. The reason for that is that otherwise it produces anomalies as soon as one gets over the threshold, one could be paying much less for a consideration which is only marginally higher than less than £30 million so if one is just under £30 million one pays 0.8, if one is just over £30 million one pays 0.6, the reduction in commission might actually be less than the difference in the sale price between just under and just over £30 million so this amendment has been introduced. The figure that I have already available to me for how much this is worth to the Government is calculated on the pre-amendment, so I now have to adjust it so that the first £30 million is now at 0.8 and not at 0.6. I will give them that during the Committee Stage.

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 TRAFFIC ORDINANCE (AMENDMENT) ORDINANCE 2001

HON CHIEF MINISTER:

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

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the objective of this Bill is two-fold although one of the folds is a necessary consequence of the first. The provisions of the Bill as they stand in the section beginning on the front page marked 47(a)(i) under the heading – Driving Or Being In Charge When Under The Influence Of Drink Or Drugs – is the law as it currently stands under the traffic ordinance simply reproduced for the sake of convenience in the layout of the amended legislation. That is the law on Driving Under The Influence of Drink Or Drugs as it stands at the moment and that will remain as part of the law. The purpose of this Bill is to address a problem, a difficulty in the practical enforcement of that law in that it is heavily dependent on doctors, mobilising up to the police station in order to provide the police with the necessary evidence. The police in turn know that it is on many occasions difficult to get a doctor to mobilise the result of that then is that they take less of an interest in policing this particular important offence because they know it is very difficult to secure the evidence to take the matter to court because of the reliance on a doctor going to the police station to express a view about whether the arrested party was or was not unfit to drive through drink or drugs, the result is a culture where it is thought it is possible in Gibraltar to drink and drive or to drive under the influence of drink or drugs with relative impunity in the sense that it is not a particularly heavily policed part of the law for the reasons that I have just explained.

The objective of this Bill is to enable the police once they have arrested an individual on suspicion and taken him to the Police Station, to provide the evidence through the breathalyser as opposed to having to rely on a doctor being called out. Let us be clear, the Bill does not provide as does the law of the United Kingdom and most countries of Europe, it does not provide for the conduct of random or any breathalyser on the roadside. Hon Members may not be aware from what they see on television and read in newspapers and photographs they see in newspapers, that in England the breathalyser test that one sees people having to do on the side of the road after the policeman has stopped them and sort of tapped on their windscreen and asked them to blow into this, that is only to establish a prima facie case of suspicion to justify the arrest. The person is then taken to the police station where a further breathalyser is carried out and that is the one that the UK police rely on for their evidence in court. We are not proposing to do that in Gibraltar. The police first have to have a reasonable suspicion on other criteria, some of which are set out in the Legislation to suspect that somebody is driving under the influence of drink or drugs. If they then choose to arrest, in that respect there is no change from the present law, and take the person up to the police station, at the police station, or if they are hospitalised following an accident, either at the

police station or at a hospital they may then do the breathalyser to establish the level of alcohol either in the urine, in the breath or in the blood stream, which are the three places where one can measure these things I am informed. At the police station the idea is to make this prohibition in the law on driving whilst unfit through drink or drugs, more enforceable, more policeable and to act as a greater deterrent. I am certain that there is nobody in this House that does not share the objective of protecting not just the youth, the victims of this can be everybody and anybody. People who drink and drive whilst they are unfit to do so through drink, pose a severe threat not just to themselves and not just to their passengers in their own vehicles but to innocent pedestrians and occupants of other motor vehicles on the road. This is an attempt to draw a compromise in that the police will be able to more effectively enforce the law without submitting what is a mainly urban environment and culture into a situation where any of us cannot get into our cars after we have been to our club or to this or to that for fear that there will be a policeman standing round the corner with a breathalyser test which would be a severe disruption. Government will keep this under review, we believe that the ability to obtain evidence in the real cases of serious drinking and driving will be sufficient to enable the police to deal effectively with the problem in a small place like Gibraltar without having to subject the rest of us who may have the occasional drink and then drive to any fear of jeopardy when in fact we may not constitute a danger as such. To achieve that, the Bill creates the new offence which exists everywhere else but has not historically existed here, in section 47 (b) creates the new offence of – driving or being in charge of a motor vehicle with alcohol concentration above prescribed limits – so, whereas before the whole of the law was reflected in 47(a)(1) which means that it was only an offence to driving a vehicle whilst unfit through drink or drugs to drive it or attempting to do so or even being in charge of a vehicle when unfit to do so through drink or drugs, that requires a doctor to go up and make a subjective or from the point of view of the driver an objective assessment of whether that individual was or was not unfit to drive.

Under the new offence which is the same offence elsewhere in Europe, there is an offence of simply driving or attempting to drive or being in charge of a vehicle with more than a prescribed quantity of alcohol in ones blood, in ones urine or in ones breath and the quantities permitted are set out in subsection M of section 47 on page 198 of the Bill and we have in fact chosen the United Kingdom limits, that is 35mgs of alcohol in 100mls of breath or 80mgs of alcohol in 100mls of blood or 107mg of alcohol in 100mls of urine. There are obviously exemptions which are invoked on the issue of a medical opinion to prevent the taking of breathalysers of people under medical treatment when the doctors advise that it would be contrary to the interests of the health or because of a particular condition that they may be suffering or treatment that they might be undergoing for people to be subjected to a breathalyser. There are standard provisions also drawn from corresponding legislation in the UK to entitle drivers to a card of their sample and there are also provisions enabling the driver in certain circumstances to opt for a blood test if he is dissatisfied with the results of the breathalyser test, so there is a series of in-built mechanisms to give the driver certain options and finally I would like to point out to the hon Members that at section 47 (j) on page 196 of the Bill is the provision giving the readouts of these machines, the weight of evidence in a court the read outs of these machines are deemed to be the amount of alcohol that one has in ones bloodstream, section 47 (k) on discretionary disqualifications on driving leaves whether or not a driver is disqualified entirely to the court's discretion on the first conviction, on the second conviction within a six year period, a period of disqualification is mandatory but the length of that period of disqualification remains at the discretion of the court. In both cases whether it occurs on the first or second conviction the length of the disqualification remains at the discretion of the court but a period of disqualification is mandatory on the second conviction in any six year period.

Hon Members may be interested to see at section 47(c) there is list, I told the hon Members earlier, that there was no roadside breathalysing, and therefore the decision to arrest for this offence of driving with more than the prescribed limit of alcohol has to be triggered by some suspicion. There is a list of circumstances which may give rise legitimately to a suspicion on the part of a police officer that the driver of the vehicle is driving under the influence of drink or drugs, page 191 of the Bill at proposed new section 47(c) subsection (3), that list is not exhaustive but it is an indication of the sort of physical evidence of the sort of things that policemen and others might see that might lead them reasonably to the suspicion that the person in charge of that vehicle is driving under drink or drugs thereby justifying the suspicion that leads to the arrest, that leads to the breathalyser eventually being carried out at the police station. I commend the Bill to the House.

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

HON J C PEREZ:

Mr Speaker, anything that discourages drinking and driving the Opposition will support and it is particularly fitting that we should be discussing this around the Christmas period which is regrettably when we get more offences of this nature. It is something that has been in the old Bill and it is something that I would have welcomed to see defined in a better manner and that is the part of the Bill where the person is deemed to be in charge of the vehicle. I know that this has caused problems in the court before because the discretion of the officer in deciding whether the person is in charge of the vehicle is a very wide thing and I do not know whether it can be defined in a better manner to give some guidelines to the officer on how that discretion should be, but I know that it is a challengeable thing in the court and it is something that in many instances, in my view, officers would shy away from using that discretion precisely because it is so open that it is very challengeable in a court of law. As I say it is not something new it is something that was in the statute and in revising the Bill I thought that it might be a welcome thing to have looked at that. The other aspect of the Bill which I think is the power of the Minister by regulation to change the proportion of the micrograms of alcohol for the purposes of the breathalyser. In my view, since I am sure that the Minister is not going to take a decision of this nature by himself he is going to take advice from experts on the matter and will probably be following a pattern of what is happening in the European Union or something else. It is something that should be brought to the House and the documents justifying the change in the micrograms of alcohol that are going to be used for the breathalyser should be something where Members of the Legislature would have documents supporting and substantiating why those need to be changed for any given reason unless there are circumstances which I do not see in the Bill where there might be a need to do this in a very quick manner for specific cases, although I do not think that is the case.

Mr Speaker, I am glad that the Chief Minister has said that the Government are going to keep this Bill under review because I think there should be coaching and guidelines for police officers in effecting this Bill particularly in its initial stages so that we do not end up having problems of the Bill in its initial stages being successfully challenged in court because we might have been applying it in a manner that might not have been the correct procedure. Certainly the part where an officer requires someone to have a blood or urine test can I think bring a bit of conflict in the relationship there because it is not only the driver that can opt for a urine or blood test, but in some circumstances a police sergeant may be able to require a driver to have a blood or urine test and we have reservations on that particular point in the Bill. The general thing is that I am glad that the Chief Minister has said that he is going to keep it under review because we need to make sure that it does not cause more problems than what it solves. I know the long standing difficulties of having medical practitioners go down to the police station to examine people on suspicion of being under the influence of drink or drugs and not only calling on the police station but indeed later having to

appear in court and give evidence which was the disincentive for going to the police station in the first place because it took a lot of time at a later stage and that this is a manner to perhaps solve that problem in some way. Mr Speaker we support the Bill.

HON CHIEF MINISTER:

Mr Speaker, dealing with the first point the hon Member made, the provisions relating to the circumstances in which one is or is not in charge of a vehicle which one is not driving follow the UK legislation and there is an advantage in doing that because it means that there is a large body of decided cases interpreting when one is, because it does not mean that one is in charge of the vehicle whenever one is sitting in it with the key in the ignition, the law does say that even though one is sitting in a car one is not liable to being convicted of the offence and the hon Member has seen those provisions replicated here as they where in the original 47 (a) also replicated in 47(b) at subsections (2) and (3) and the advantage of not departing too much from words and phrases that are subject to extensive judicial interpretation and definition in the UK is precisely the reason that the hon Member suggests and that is, that it does provide the guidelines. There are, I do not doubt that there are still factual circumstances that can arise that have not been adjudicated on by a court before but most of the circumstances likely to arise will have been the subject of interpretation by a court somewhere in the United Kingdom and that provides not just guidance for the court once the matter comes before it but indeed provides guidance for the learned Attorney General in deciding whether or not there is sufficient evidence to proceed with the prosecution in the first place, whereas if we try and redefine the concept ourselves we find that we have no guidance whatsoever except the guidance that we ourselves create either in Attorney General's guidelines to the police or putting the legislation ourselves.

The hon Member mentioned the possible difficulties involved, and I think he did recognise, again that this is old law this is not new law, this business about the taking of blood or urine sample instead of the breathalyser, yes, there will be situations created not just created by the option of the police but by the option of the driver who in certain circumstances has the option or chance to opt for a blood test. As far as the exercise of that option by the police is concerned he knows, I am sure, it cannot be exercised by an officer of less than the rank of sergeant. A police constable cannot exercise the choice of submitting an individual to a blood or urine testing, even a sergeant and above can only do it in the circumstances set out there in section 47(d) subsection (2), (b) which is basically a limited range of circumstances where there is reasonable cause to believe that an accurate breath test can not be obtained. So, by all means these are things that whenever one introduces a new legal regime and legal framework, I think it is important to keep it under review, I am sure that the learned Attorney General will be giving the police guidance, guidelines on the application of this legislation and certainly if the initial experience suggests that the law needs to be tweaked in order to make it more effective or less open to difficulty either for the drivers, either for the citizenry or for the police, in either case then of course the Government will not hesitate to come back to the House and seek the agreement of the House to the necessary amendments. By that comment I think I have also dealt with the point that the hon Member made about the successful monitoring in its initial phases to ensure that the way it is deployed initially does not result in its successful challenge in a way that deprives the Bill of its intended purpose and certainly that will happen. I think that the only other point that he has made relates to the selection or alteration in future of the prescribed limit. I do not know whether the hon Member by reference to sort of manuals and scientific evidence, books, papers and advice suggests that this is a matter of science. I do not think that the prescribed limits and the level at which one sets them is actually a matter of science, I think it is a matter of policy, they are set at a level that reflects the degree of tolerance that as a society one is willing to have of drinking and driving there are some countries in northern Europe I understand where there is now zero tolerance, this would read zero milligrams of alcohol I do not know if that is the case of Sweden, I know that there are

some countries up there which have practically zero or minimal alcohol content probably at the opposite extreme we have the southern European Mediterranean countries where we have a different sort of culture and which could be sustained by a zero tolerance environment and then in-between one has the countries that want to try, I will give way if that is what he wants.

HON J C PEREZ:

Mr Speaker, it is not a question of it being scientific or anything else but I am sure that the Minister for Transport in the same way as if I were in his shoes would not think of altering that for any reason other than suggested to him by people either by the police, or because it has been changed in the UK, or because there is a report in the European Union that suggests that the levels are not being effective, it is not that it is complicated or scientific but it must be based on something, not because the Minister wakes up one morning and says I think I am going to either have an ineffective breathalyser test by reducing them or puts them so high that no one can even have a sip of wine before driving a car. It must be based on some advice that he receives and what the Chief Minister is telling me is that really that the pattern is that we are going to follow the UK and we are going to do it by regulation, fine, that is the policy of the Government today or could be the policy of the Government today but what I am saying is that since this is not something that is going to be changed on a daily basis or weekly or monthly basis it is something that would need to be altered for some particular reason, there is no reason why it could not be brought to the House for an amendment and the House told why it is the intention of the Government to amend it. That is the only point that the Opposition is making.

HON CHIEF MINISTER:

The second last point that he made is what I was trying to address, that when I said that this was not a matter of science I was not trying to suggest that it was complicated, what I was trying to suggest is that the level at which one pitches these figures is a matter of policy and the hon Member says rather graphically "you know, the Minister is not going to get up one morning and say today I am going to change the prescribed limit" but in effect as Government and as policy makers that is what happens. There are times when countries decide to change these limits not because of any scientific proof that they need to be raised or lowered because they have invented a new alcohol but rather that the Government decide as a matter of policy that the level of tolerance of drink when one is driving should be lowered, now we have not formed a view we have not even addressed our minds to what that should be in terms of trying to make an independent assessment, we have just said " well , look we will follow the experience of that experienced country in this matter with which we have more or less the closest legal and institutional affinity" which is the United Kingdom, now there is nothing in terms of this Mr Speaker, whether the Government alter the prescribed limit by regulations or whether they bring it by primary legislation is not central to the Bill we can do it either by making it prescribed by principal legislation or preferably and it would be the Government's preference that it should be done if it is to be done by regulations that it should be subject to them being laid and then approved by the House, this is the mechanism that we use in some instances usually in the area of taxation but not exclusively in the area of taxation whereby if regulations are passed it has got to be laid in the House within the prescribed time limit and if they are voted against they fall away. We can do it in either of ways the Government are in no particular desire to want to change this but I understand that this is how it is done elsewhere, this is not drafted like this as a matter of political policy it has just been put in by the draftsman and therefore one way or the other the Government do not have a very strong view as to whether it is done by regulations or by primary legislation or by regulations of the sort that have to be laid and not disapproved by this House.

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 the Bill be taken later 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 Supreme Court Ordinance (Amendment) Bill 2001.

(2) The Traffic Ordinance (Amendment) Bill 2001.

(3) The Misleading and Comparative Advertising Bill 2001.

THE SUPREME COURT ORDINANCE (AMENDMENT) BILL 2001

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

Clause 2

HON CHIEF MINISTER:

I move the following amendments.

Delete subsections (3)(ii) and (iii) of section 39 and insert new subsection (ii) as follows:-

"(ii) Where the total fleet sale price exceeds £30 million the fee payable shall be the fee payable under subsection (3)(i) above on the first £30 million thereof plus a sum equivalent to 0.6 per cent of the remainder of the total fleet sale price in excess of £30 million"

HON DR J J GARCIA:

Mr Chairman, the Chief Minster was going to supply some information regarding the Renaissance at Committee Stage and the Opposition will be supporting the amendments in any case.

HON CHIEF MINISTER:

Mr Chairman, the total sale price for all the Renaissance ships was $604 million, two ships, the little ones as they became known were sold for just under $10 million each the two of the big ones were sold for $110 million each, two for $115 million each and one for $154 million. The Consolidation Fund will receive just over $2,5 million using a rough exchange rate from dollars to pounds at 1.45 or something like that.

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 TRAFFIC ORDINANCE (AMENDMENT) BILL 2001

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

Clause 2

HON J J BOSSANO:

Mr Chairman, I beg to move that the Ordinance be amended as follows:

Delete subsection (3) of section 47E and in section 47M (1) delete the comma after the word "urine" and insert a full stop; and delete the words following "or such other proportion as may be prescribed by regulations made by the Minister."

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

Clause 3 and the Long Title - were agreed to and stood part of the Bill.

THE MISLEADING AND COMPARATIVE ADVERTISING BILL, 2001

Clauses 1 to 4 - were agreed to and stood part of the Bill.

Clause 5

HON H A CORBY:

Mr Chairman, I move the following amendments:

Delete heading and the whole of section 5 and insert:

Complaints – consideration by Consumer Officer and Designated Persons

5. (1) The Minister may appoint by notice in the Gazette a Consumer Officer to administer the provisions of this Ordinance.

(2) It shall be the duty of the Consumer Officer to consider any complaint made to him that an advertisement is contrary to the provisions of this Ordinance, unless –

(a) the complaint appears to the Consumer Officer to be frivolous or vexatious; or

(b) a person appointed under subsection (3) has notified the Consumer Officer that he agrees to consider the complaint.

(3) Without prejudice to subsection (1), the Minister shall designate by notice in the Gazette, such persons or group of persons who apply to him for designation and who, in his opinion, have as their sole or principal aim the promotion of interests of consumers.

(4) If a person designated under subsection (3) notifies the Consumer Officer that he agrees to consider a complaint that an advertisement is contrary to the provisions of this Ordinance, he shall be under a duty to consider that complaint.

(5) The Consumer Officer or, subject to subsection (6), a person designated under subsection (3) may apply for an injunction (including an interim injunction) against any person appearing to the Consumer Officer or that person to be using, or

recommending use of, an advertisement contrary to the provisions of this Ordinance.

(6) A person designated under subsection (3) may apply for an injunction only where –

(a) he has notified the Consumer Officer of his intention to apply at least fourteen days before the date on which the application is made, beginning with the date on which the notification was given; or

(b) the Consumer Officer consents to the application being made within a shorter period.

(7) The Court, on an application by the Consumer Officer or, subject to subsection (6), a person designated under subsection (3), may grant an injunction or such other order on such terms as it thinks fit: without prejudice to the generally of the foregoing, the court may direct the person responsible for any advertising found to be contrary to the provisions of this Ordinance –

(a) to publish all or any part of the decision of the court,

(b) to publish a statement correcting the said advertising,

in such form and manner, and to such persons, as the Court, in its discretion, may see fit.

(8) The Consumer Officer or, subject to subsection (6), a person designated under subsection (3) –

(a) may, if he considers it appropriate to do so, have regard to any undertakings given to him or to the Minister by or on behalf of any person as to the continued use of such advertising.

(b) Shall give reasons for his decision to bring or not to bring proceedings as the case may be for an injunction in relation to any complaint which this Ordinance requires him to consider.

(9) Notwithstanding a decision not to bring proceedings for an injunction under subsection (8)(b) any person may bring such proceedings in his own name .

(10) An injunction or other order may relate not only to use of particular advertisement but to any similar advertisement, or advertisement having like effect, used, recommended or intended to be used by any party to the proceedings.

(11) The Minister may arrange for the dissemination in such form and manner as he considers appropriate of such information and advice concerning the operation of this Ordinance as may appear to him to be expedient to give to the public and to all persons likely to be affected by this Ordinance.

HON DR J J GARCIA:

Mr Chairman, the Opposition will be supporting the amendments. We welcome the fact that the Minister has looked into the points that we raised when the Bill was originally discussed last month and the Opposition abstained on the Second Reading of that Bill, we will now be voting in favour of that Bill given that the Minister has taken into account some of our suggestions.

HON CHIEF MINISTER:

Mr Chairman, we are grateful for the hon Member's support for the Bill but it is important that he does not proceed on a misunderstanding. The amendment is consistent to the point that he made on the Second Reading but does not actually address the point that he was making. The point that he was making during the Second Reading was that he could not support a Bill the enforcement of which was in the hands of a public officer as opposed to being a private legal rights of the complainant, that is the point.

HON DR J J GARCIA:

Mr Chairman, the point that we made in relation to this Bill in November was that the 1993 Ordinance gave members of the public the right to take it to court themselves and that the amendments being proposed actually now are done by removing that right and giving it to the designated officer. Even though the Government's original Bill complied with the EEC Law we felt that it removes certain rights to people that exercised or could have exercised previously.

HON CHIEF MINISTER:

The Government's policy was based on the experience that actually the hon Member's view is not made out although it is preserved. He will have seen in the amendments that it now leaves both in parallel but the experience was and the reason why my hon Colleague when he was Minister with that responsibility in 1998 alighted on this formula was that in fact since 1993 no one had exercised their rights under the legislation because the average citizen does not wish to incur in the costs or in the inconvenience of taking a business with much deeper pockets to court, and therefore a right, a civic right, a consumer right, which requires the citizen at his expense and at his initiative to take on business is not a civic right at all and therefore the Government do not agree with the hon Member that transferring the responsibility for enforcement to a public officer at public expense far from being a curtailment of individuals rights was actually an attempt to broaden them in that there would be as there had always been before the previous Government abolished it, the Consumer Protection Officer, there had always been a publicly funded official with the responsibility on behalf of the citizen and at public expense to engage in Consumer Protection Enforcement. The Bill was defective in its drafting and we are grateful for the hon Member the points that he raised at Second Reading gave us the opportunity to discover that even in the respect of what we were trying to achieve the Bill was defective and that has been corrected. For the purposes for those who believe as the hon Member does, although the experience since 1993 does not suggest that it is so, that the individual should retain the right , himself to take action at his own expense, that right is also contained in the legislation so what we now have is a twin-track approach whereby the primary responsibility will be on a publicly funded, publicly appointed officer and only if he chooses not to proceed does the individual then have the right to proceed by himself so that both arguments are addressed by the amendments that my hon Colleague moves.

HON J J BOSSANO:

Given that we are all agreeing on this it is peculiar that we should be debating it but let me say that I am surprised that all those policy considerations entered into it because in fact when the Minister agreed to leave the Bill at the Committee Stage he said it was not a matter of policy, he said he did not know why it was there and that the Government had not taken a political decision on this, that is what he said the last time round. Not only have we made them look at what they were doing but we have made them remember why they did it because they had forgotten it when we considered it the first time. I have to say that he may well find that the Consumer Officer has the same experience of not getting any complaints than has been the case since 1993 in

nobody coming forward wanting to be appointed and I can tell him that if he looks back at the long history of areas of things like price control, the amount of actual people coming forward was minimised. Here we are talking about something which is theoretical in the sense that if somebody objects to an advertisement that he thinks is misleading, the normal reaction of a normal average person is that if he feels that the advertising is misleading he will not buy the product and leave it at that and not engage in either complaining or going to court. It is there presumably because we are required to do it by EU Law primarily, all that we have pointed out was that if one creates an official or a body that is able to say to somebody "*No I do not agree with you about your complaint that is misleading*" and therefore it cannot go forward, one is in fact depriving somebody who might in theory have wanted to do it from being able to continue to do it. We are glad that that avenue has not been closed that is all there is to it.

Clause 5 - as amended, was agreed to and stood part of the Bill.

Clauses 6 to 8 and the Long Title - were agreed to and stood part of the Bill.

THIRD READING

HON ATTORNEY GENERAL:

I have the honour to report that the Supreme Court Ordinance (Amendment) Bill 2001, with amendments, the Traffic Ordinance (Amendment) Bill 2001,with amendments, and the Misleading and Comparative Advertising Bill 2001, with amendments, have been considered in Committee and move that they be read a third time and passed.

Question put.

The Supreme Court Ordinance (Amendment) Bill 2001; the Traffic Ordinance (Amendment) Bill 2001; and the Misleading and Comparative Advertising Bill 2001, were agreed to and read a third time and passed.

PRIVATE MEMBERS' MOTION

HON J J BOSSANO:

I beg to move the motion of which I gave notice , namely:

"This House –

(1) Notes that the terms of Gibraltar's accession to the European Union were agreed between the United Kingdom and Gibraltar fourteen years prior to the entry of the Kingdom of Spain.

(2) Considers that any alteration in these terms of membership are exclusively a matter for the Government of Gibraltar and this House.

(3) Declares that the United Kingdom Government has no constitutional authority to enter into discussions or negotiations with the Government of the Kingdom of Spain to alter Gibraltar's terms of membership of the European Union.

(4) Calls upon the Leader of the House to transmit the text of this resolution to Her Majesty's Secretary of State for Foreign Affairs and to request of him that he desists forthwith from holding the aforementioned discussions or

negotiations with the Government of the Kingdom of Spain, and gives an undertaking that these will not be resumed.

(5) Further calls upon the Leader of the House to inform the House of the reply received from the Government of the United Kingdom."

Mr Speaker, I bring this motion to the House as a result of the information that has become revealed in the cause of Mr Hain's appearance before the Foreign Affairs Committee of the House of Commons and subsequent references that have been made which clearly indicate that the negotiating process which was re-launched in July and the Barcelona meeting and the one that is now going to be held in January, clearly include discussions of our terms of membership of the European Union and in particular our membership of the Customs Territory and our inclusion or exclusion from value added tax and presumably the Common Agricultural Policy. Certainly that is not one of the things listed in the original Brussels Declaration of 1984 and I think it is the first time in the whole period since the Brussels Declaration was made that any British Government has indicated that they considered it a legitimate part of the bilateral discussions under that particular agreement, it seems to be, in fact, extending the scope of the agreement.

In the first point of the motion I recall the fact that we were given choices prior to the 1st January 1973, that is to say, the Government of Gibraltar, the Peliza Government that was there at the time was consulted by the British Government and the Opposition was consulted by the Gibraltar Government in turn as to what was the best way to go into the European Union or indeed whether to go in at all. It was left to us really, to say to the United Kingdom what it was we wanted very much in the same way as it was left to Jersey, Guernsey and the Isle of Man. I think the simplest way of describing it was that at the end of the day in simple layman's terms, we actually went in for the things that they had stayed out of, and they had gone in for the things we had stayed out of, and I think it reflected both our geography and our own particular economic structures. Although there has been on occasion a minority view in Gibraltar that we might be better off inside the Customs Union and all the rest of it, it has been very much a minority view, but if in any case we ever decided that that was what we wanted, I think the right way to go about it is for us to have a debate here, to consult in particular the business community who are going to be the people in the front line of any changes in these conditions of membership and then for the initiative from Gibraltar to the United Kingdom and not the other way round. As it so happens because there was an early election in 1972 the process that was started by Bob Peliza's Government was actually finished by the AACR and the Bill came to the House in November 1972 and it was one of the first pieces of legislation that I had to consider as a newly elected Member in this House 29 years ago, and in the cause of that there was quite a lengthy debate in the Committee Stage about concern that the United Kingdom might be able to extend things to Gibraltar and that this could be done by regulation by the Governor without the House being involved and a commitment was given at the time by the Government that in fact there would be informal consultation and there was during the course of the debate informal consultation and particularly there was discussion with the Attorney General were Opposition Members were worried about some of the wording there, although the bulk of it was in fact identical to the United Kingdom 1972 European Communities Act. In looking at that it seems to me quite extraordinary that there is any need at all, I would have thought the thing was crystal clear now in our own minds, and crystal clear in the minds of the United Kingdom Government although sometimes they say things which suggest that they do not remember what it is that they have said previously within very short spaces of time, we only have to look at the statement in the House of Lords made very recently, that the United Kingdom's legislation to enfranchise Gibraltar has nothing to do with anybody else and compare it with what Mr Hain had said a couple of weeks earlier. So, presumably if they have forgotten something in three weeks it is not strange that they should have forgotten something that has been there 29 years ago, but I can

tell the House as somebody that was involved at the time that there was a very clear understanding in this House that our membership of the European Union was something that the United Kingdom would not foist on us any changes, that any changes would be a matter that would be raised by the United Kingdom with Community partners if we initiated a process requesting that that should happen. In fact, the provisions in the Act of Accession themselves actually say that the Common Agricultural Policy and the Value Added Tax do not apply in Gibraltar unless the Council acting unanimously on a proposal from the Commission provide otherwise, so the actual Act itself does not protect Gibraltar, we have no veto in this but the veto is the commitment of the United kingdom that since it requires unanimity they would not agree to a proposal from the Commission if that proposal does not enjoy the support of Gibraltar.

In the case of the actual Customs Union as far as I can tell, our position is even more enshrined, we are listed as not being part of the Customs Territory and it is interesting that on the 10th of this month in answer to a question in the House of Commons the United Kingdom Government told Lindsay Hoyle that the treaty establishing the Community defines the area of the customs Territory and that a number of areas are excluded which is not just us. It is the Faroe Islands, the Islands of Eligaland and the territory of Busenjen, Ceuta and Melilla, the French Overseas territories, the municipalities of Livinjo and Campione Italia and the national waters of the lake of Lugano that are between the bank and the political frontier of the area between Pompetresa and Pomteceresio and then it says that in addition it does not apply to territories for whose external relations the Member State is responsible such as Gibraltar, well in fact we all know not only such as Gibraltar, Gibraltar is the only one. All these areas that are mentioned there are territories that joined the Community on that basis and it would be totally unacceptable that one negotiates terms of membership in the European Community as it was known then, in the European Union as it is now and that the other party in breach of what was agreed unilaterally changes what one wants and of course it is even less acceptable that that should be as a result of bilateral negotiations between the United Kingdom that is the Member State responsible for us in the European Union and the Kingdom of Spain that is not the Member that is responsible for us and has no particular right to be consulted or to be involved in any discussion or negotiation on this basis and I hope that therefore the terms of the motion enjoy the support of the Government and reflect the same views that we have expressed on behalf of Opposition Members and I am sure that the view that the House had at the time as I said on the 29th November 1972 that we were agreeing something that was casting tablets of stone unless we wanted to change it. Obviously I am assuming throughout my speech in support of the motion that this is not something the Government of Gibraltar have asked the Government of the United Kingdom to do I am taking that as read. I commend the motion to the House.

Question proposed.

HON CHIEF MINISTER:

Mr Speaker, he would have avoided whatever risk he thinks there might have been in his having read it wrongly if he had asked us before he published his motion. Before I come to the terms of motion it gives me an opportunity to express, to say some things about Common Customs Union generally, the Government would not support the alteration of Gibraltar's status in relation to the European Union in terms of Customs Union and it is regrettable that, well it is not regrettable that there are those in Gibraltar who have a different view, one must never regret the fact that there are views which one does not agree but what I think is regrettable is that those views may be articulated to Gibraltar's detriment without the person who makes or holds those views actually having thought through the economic consequences of those views. It is all very well to say "*Gibraltar should be in the Common Customs Union because that way we are more in the heart of Europe and we are less out and Spain has got one less thing to complain about*" fine, but the economic consequences of

Gibraltar being inside the common Customs Union are very, very considerable not just to Government revenues but also to the competitiveness of large sectors of the private sector and I think that people that express these views ought to inform themselves about the extent of the horizontal consequences of the views that they are expressing, for example, in that the Government collect today an import duty in the figure of the order of £30,000,000 a year, well that is a significant chunk of total Government revenues upon which public services depend, if those who advocate the entry of Gibraltar into the Common Customs Union presumably understand the consequence of that to that source of revenue for the Government and presumably understand the consequences to this community economically of the loss of that source of revenue to the Government, economically and socially to that loss of revenue stream to the Government. Therefore, it is important that things are debated in Gibraltar not only by reference to their political value or lack of political value as the different opinion strands would have it but that the ability of Gibraltar to sustain the consequences of a particular point of view economically and socially should also be given due prominence and due weight when these are not debates that can take place in isolation from the realities of their economic consequences. But of course no one has said explicitly that a change in the status of Gibraltar in relation to the Common Customs Union is on the cards but it has been implied and for people, and this is in a sense it would be better to have said so clearly and not expect the citizen to decipher technical expressions, when somebody says " *let us do a deal which amongst other things will result in a free flow of goods"* let us be clear a free flow of goods can only result in physical practice if one is part of a single market in goods and the view that the United Kingdom has always defended is that one cannot be part of the Single Market in Goods without being part of the Common Customs Union. Indeed we are currently outside of the Single Market in Goods only because it is thought to be the natural consequence of being excluded from the Common Customs Union and so this phrase "free flow" in goods carries with it the implication of a change in status in Common Customs Union and certainly hon Members may have heard how I chose to answer this question in the Foreign Affairs Committee, I did not want to get bogged down in deeper detail of this matter, I limited myself on that occasion to saying that any change in Gibraltar's Customs status in the EU would have significant adverse consequences given how the economy of Gibraltar is currently orientated and that is all that is basically euphemism for the fact that there are revenue and competitiveness issues here which cannot be overlooked by those who advocate for Gibraltar's inclusion in the Common Customs Union.

Mr Speaker, the Government share the views expressed or reflected in the motion in so far as its substance, meaning and effect is concerned but we do not feel we can share, we can agree the language or the terms in which it has been articulated. We agree with the hon Members that Gibraltar's accession to the European Union were agreed between the United Kingdom and Gibraltar 14 years prior to entry of the United Kingdom, we agree with the sentiment expressed by the hon Member that the change of Gibraltar's status in the United Kingdom should first of all be initiated by us and he will see when he sees my proposed amendments that actually my amendment uses that very phrase, but there are elements of the language in the hon Member's which we consider that we are unable to support or indeed inappropriate, for example, I would not wish to so quickly make a legalistic judgement on whether the United Kingdom has or has not got Constitutional Authority, that is a matter of law. I prefer to keep this on a political plain whether the United Kingdom as a matter of United Kingdom law has the ability to do this is moot they would argue that they have, many in Gibraltar would share their view. We do not believe that it is appropriate in a motion in this House to demand an undertaking from the Foreign Secretary we believe that the House should limit itself to expressing what its view of life is on this issue and for that purpose I would like to propose some amendments to the hon Member's motion although I have retyped the motion that is not because there is one of those amendments of the every word after the House type it is simply for convenience, the hon Member will see that in some parts of the amended motion the language remains as the hon Members have drafted it, in other parts it is the same

substance but recast in different language and I would hope that the hon Members can support the amendments.

Mr Speaker, the hon Members will see that the amended wording we are proposing is as follows:

"This House –

(1) Notes that the terms of Gibraltar's accession to the European Union were agreed between the United Kingdom and Gibraltar fourteen years prior to the entry of the Kingdom of Spain.

(2) Considers that the possibility of any alteration in these terms of membership should only be initiated by a request from the Government of Gibraltar and then dealt with bilaterally between Gibraltar and the United Kingdom, subject to the subsequent approval by all the Member States of the EU to any required amendment to the Treaty Establishing the European Community and the UK's Treaty of accession thereto.

(3) Notes persistent media reports that current Anglo Spanish discussions may include the alteration of Gibraltar's terms of membership of the European Union AND CALLS ON the British Government to desist from such discussion of this issue.

(4) Calls upon the Leader of the House to transmit the text of this resolution to Her Majesty's Secretary of State for Foreign Affairs and to inform the House of any reply that he may receive."

The extra four lines in (2) are really an attempt to make it legalistically accurate. The point being made there is that the process of initiating the position of whether our status in Europe should change is a bilateral matter between Gibraltar and the United Kingdom and if there is then a need to change the EC Treaty, that might require the consent of all the other Member States. In (3) "Notes persistent media reports" I may wish to amend by an amendment in the sense that it is slightly more than persistent media reports by implication as I have just explained it is implicit in some of the things that Mr Hain has said I would certainly be happy to alter the language to reflect that fact. Hon Members should not assume that a reply will be forthcoming. [*Interruption*] Well I think we should receive one as well but the language of the motion should not assume that we will receive one.

HON J J BOSSANO:

On the last motion we passed where in fact my original text called upon the Chief Minister to take it up with the British Government and it was amended by the Government to read the Leader of the House, he did get a reply which he circulated to all of us.

HON CHIEF MINISTER:

Yes, there was a previous one, another one in which Mr Hain answered in Parliament that in fact the letter sending him the motion did not call for a reply. I cannot remember which one, there was one, because it did not ask for a reply one was not given. As I said, I am happy to add to new paragraph (3) words to reflect that this is not just persistent media reports but that it is remarks by the Minister of Sate I do not know if the Foreign Secretary himself has made any remarks that would suggest that but certainly Mr Hain's reference to free flow of goods carries that indication with it and I am certainly very happy to introduce that. The hon Members can see that the principle amendments are that we exclude this declaration as to whether or not there is Constitutional authority which are legalistic issues and that we add in paragraph (2) this idea that should there be a requirement to alter the treaty then all the Member States may have to give their consent to it but that is the extent to it, that Spain should

have no bilateral role with the United Kingdom in any decision to initiate, still less to negotiate the alteration of our status and I notice that in his oral presentation of his motion the Leader of the Opposition himself used the phrase that the process should only be initiated by us and in fact that coincides with the Government's view, as reflected in the written amendment which I have submitted. I commend the amendment to the House.

Question proposed.

HON J J BOSSANO:

Mr Speaker, obviously we want to come out with a unanimous decision on this issue because we want to send a strong message back to London and therefore I would like to argue some of the points that have been raised in support of the amendment given that the opening remarks by the Chief Minister was that in principle everything that they had said was something that was shared, when I moved the original motion.

Let me say that this question that in part (3) the statement that the United Kingdom has no Constitutional Authority may not be one that everybody can agree with, well I find that extraordinary because I am not talking about the United Kingdom's authority to change our terms of membership by going as the Member State responsible to the European Union, I am talking that they have no Constitutional Authority to negotiate with the Government of the Kingdom of Spain to alter our membership. Are we saying then that the United Kingdom we believe is free under our Constitution to negotiate with Spain? I do not think they even require to do it by the terms of the Brussels Agreement, they know the things that are listed, military co-operation, economical co-operation, tourism, the United Kingdom did not enter in 1984 into an agreement with Spain nor was Spain seeking such an agreement in 1984, nor was it ever suggested in all the debates we had about Brussels in those years that part of the commitment entered into was that they would negotiate our membership of the European Union and therefore it could be argued that Constitutionally the United Kingdom as the Member State responsible for our foreign affairs is not required to act on an initiative from us and may be technically, legally, notwithstanding the commitments that we have been given to the contrary, may be legally capable of taking an initiative in the European Union of proposing to other Member States without asking our permission. I would certainly not say that that is true of them having the right to negotiate with the Kingdom of Spain or with any other individual because they are the Member State responsible for us in the European Union not anywhere else , so I think if Members read the text of the original (3) I am simply declaring and I believe this House should declare whether others agree with us or not, this is a declaration of our position and our position I believe ought to be that they have not got any rights to be negotiating with Spain. The Constitution does not give them that right to negotiate with Spain our terms of membership. It may give them the right as I say to change the membership inside the European Union with the agreement of the other 14 members and that they have not got a Constitutional obligation to act on our behalf at our request, at least not under the current Constitution they may well do under the next one. I think removing that from there I hope the Government will be able to consider that point again in the light that I am drawing their attention that it is exclusively in respect of Spain that I am making the Constitutional point.

The other thing is that "calling on the British Government" seems to me to be weaker language than that of the original one and I do not see what is wrong with us seeking an undertaking from the British Government, I would expect the Government to seek such an undertaking anyway and therefore if the undertaking is requested by the House rather than by the Government then let them either give in to us or not give in to us but, if we just call on them to do it they can choose not to answer the call, ignore the call but not come clean. I think at this stage in our lives with a scenario of six months, the last thing we want to do is give the British Government escape holes. The reason for seeking the undertaking is because of course we do not believe they have

any right to be doing it, we believe statements by the Minister have given a clear indication that they are doing it, and we want to tell them to stop it and calling them to desist in my view is weaker language than the one that we had in the original but I think that the most important one is that there should be an undertaking given that they will accept what we want and if they do not want to accept it then let them come back and tell us "no, you may want it but the answer is no we are going to carry on doing it," but it is better to know it.

In respect of the point as to "we should not take it for granted that the Leader of the House will receive a reply", well I think we should take it for granted and particularly in the light of what the Chief Minister has said that the last statement by Mr Hain in the House of Commons was that he did not give us a reply the last time because we did not ask for one, so now that we are asking for one he will give us one. I think that if we write to the Foreign Secretary on such a serious matter and we are asking for undertakings we are perfectly entitled to expect that the Foreign Secretary will give an answer, yes or no. I think he cannot simply ignore what we are asking him to do. If they are not acting unconstitutionally they are certainly on the edge of acting unconstitutionally by doing this and uncertainly they are acting in breach of the understandings reached 29 years ago and on the basis of which this House passed the original legislation. We must not forget that. In this House when I voted on the 29th November 1972, I voted with a very clear indication that the commitment of the United Kingdom was that we were getting the terms that we wanted and that it would be up to us at any time in the future if we wanted any of those terms changed not that they had the right to go off to our next door neighbour and agree something else with them and impose it on us, or secretly impose it on us, or put it to a referendum to us or anything else.

One final point, Mr Speaker, which I think is important to us is that the reason why I put that it is exclusively a matter for the Government of Gibraltar and this House and that is not reflected in the second point which is that it should be initiated by a request from the Government of Gibraltar but I would hope that in a matter such as this the Government of Gibraltar would not want to initiate such a request without having discussed the matter here previously. This is not something that just affects the four year term of a Government and as I say when we went in it was done with the involvement of both sides of the House and in particular it is significant that the process was started under one Government and completed under the other and when Bob Peliza was in, the negotiations with the UK were something about which the Opposition was kept informed and when Sir Joshua was in vice versa. It was in fact decided not to do it across the floor of the House it was done informally but it meant that when the Bill came to the House there was unanimity on it because everybody's views had been taken into account. I would expect any changes towards to what was done in 1972 to follow the same pattern and therefore I will ask that the second clause which talks about "*should only be initiated by a request from the Government of Gibraltar*" that that should contain a reference "*to after consultation with the House*" although I do not want to suggest words which indicate that the Government are bound to bring it to the floor of the House or have a debate here if they may well prefer, on the last occasion it was agreed that it was better not to look at different options in public and not to consider the consequences or the benefits of one doing one thing or the other but to discuss it internally, informally and then the Government of Gibraltar would put to the United Kingdom the position of Gibraltar and that is how it was done prior to 1972 both before and after the elections, the elections which I think was in July came in the middle of this process but of course that there was a change of Government changed nothing because before the elections both sides were already involved in the process. If the Government indicate their willingness to take account of some of the points then clearly we would be happier with the result than if they want to stick with the amendment as it stands.

HON CHIEF MINISTER:

I am glad that the hon Member has made and accepted the point that consultation is one thing and ultimate responsibility is another and that one thing is the responsibilities of the Parliament and another is the responsibility of the Government which cannot be aggregated to or mortgaged to the position of any Opposition, and I am not talking about this Government or that Opposition. Any Government and any Opposition. The language that we had chosen was intended partly, I could have said "should only be initiated by a request from the Government of Gibraltar and then dealt with bilaterally between the Governments of Gibraltar and the United Kingdom", it does not. It talks of the Government of Gibraltar in the initiation and then talks about Gibraltar and the United Kingdom leaving the institutions unspecified but so long as it is clear that the process of taking the matter forward is only one in which the Government should consult I accept Gibraltar's status in the European Union should not be changed except by the consent of this House indeed another thing is whether the hon Member is trying to say, "well look the Government cannot even legitimately probe, explore, discuss unless it has shared its plans with the Opposition and consulted them on it." I mean there is a sense in which Government and this discussion is entirely hypothetical, hon Members have already heard my views on changes of Gibraltar at least in as far as Common Customs Union, the Government have no objective desire or plans to initiate any such request but if a future Government were minded to initiate such request I am not sure that it would be right to constrain them and to lumber them with the need to have to have shared their views with the Opposition from the very day go. Even whilst it is still completely casual, informal, just probing the British Government to see whether there is any mileage in it the Government in effect has been obliged to raise, to fly the kite locally by having consulted and made it a local issue. That would be my only concern in the choice of language so I would be happier, I will give way to him, I will be happy to introduce the element of "*consultation*" after the words "*Government of Gibraltar*" of consultation with the House if we can find someway of qualifying the first part of it so that it only kicks in once there is formal request or Government policy to seek it as opposed to some research, or some investigation, or some enquiry, I do not know if perhaps we are capable, I hope that we should be capable of alighting of a formula of words that injects the concept of consultation with this House whilst at the same time leaving a future Government free to at least do some preliminaries and the obligation to consult only kicks in once they decide that it is a starter or once they decide that they want to persue it or things of that sort. I will give way to him before responding on the other.

HON J J BOSSANO:

Yes, Mr Speaker, I agree entirely with that distinction. What I am talking about is before a formal process is started between the Government of Gibraltar and between the Government of the United Kingdom saying "we will not allow, you are not going down the route of doing this." This does not mean of course that the Government are not free at any time that they want to fly a kite, or commission a report, or look at the possibility and then decide that they do not want to go ahead with it. There will be no need to consult with anybody else in my view but if the Government came to the conclusion that there was a serious possibility of changing our position in the European Union I do not think they should go ahead and do it and then we get an opportunity to say what we think about it or whoever happens to be in Opposition gets the opportunity after the event when the situation may not be rescuable. I think there should be an opportunity to have an input before irremediable action is taken so that is really what I am seeking to do here and that is what I was trying to convey in the original one by saying that it is a matter for Gibraltar and the House because what I am making a matter for Gibraltar in my original one was the actual alteration not the initiation. The initiation is in the context in which the Chief Minister has said it.

HON CHIEF MINISTER:

On that basis I will, at the end of my address amend my paragraph (2) to read "*that the possibility of any formal process for the alteration in these terms of membership should only be initiated by a request from the Gibraltar Government after consultation with this House.*" The real politics of it in terms of the external is in the next words "*and then dealt with bilaterally*" . Mr Speaker, I will want to introduce something in paragraph (3) to make it more than just persistent media rumours. As to whether the word "*calls on*" is not strong enough, I am happy to entertain suggestions to strengthen the concept of calling but of course, from calling to demanding that the Foreign Secretary gives us an undertaking I think as a matter of form if nothing else it is demanding an undertaking from the Foreign Secretary, if one demands an undertaking from a Secretary of State one is almost preventing him from giving it even if he were minded to do. If I were the Secretary of State and some colonial legislature demanded from me an undertaking even if I was predisposed to giving it I might take the view that I cannot be seen to be responding to demands for undertakings, it is just unconventional methodology, but fine I am prepared to accept the principal and the essence of what the hon Member said is that "*calls for*" is insufficiently robust and I am happy to explore with him any formula that would strengthen the concept of "*calling*" and notes persistent rumours and expresses its view to the British Government in the strongest terms that the British Government should desist from. I am happy to entertain suggestions to strengthen the concept of "*calling*" but not willing to consider the concept of demanding and undertaking from the Secretary of State.

I honestly believe that the hon Member is misreading the effect of his own paragraph (3), he and I may agree and indeed we do because it remains explicitly stated in the Government's own proposed language that the United Kingdom should not negotiate with Spain or any other country bilaterally for that matter Gibraltar's European status. I would feel equally aggrieved by I suppose from a legalistic and constitutional prospective we should be equally aggrieved if they tried to do this bilateral negotiation with France. From a constitutional point of view the same issues arrive as the hon Member well knows. The hon Member should not try and suggest that the point that we are making does not mean that we think that it is right that the United Kingdom should negotiate bilaterally with Spain on this issue, we are saying the contrary in our own motion, but it is not a matter of Constitutional Authority whether the United Kingdom has the means of imposing it on us Constitutionally or not, legal question, whether or not the United Kingdom politically should, or morally should or should not is a different question but the United Kingdom's willingness and ability and freedom to sit down and in fact do this which we think they should not, is not a matter of Constitutional Authority it is not a matter of Constitutional Authority as to whether the United Kingdom does indeed, in fact if it does, it is not in breach of any Constitution. That is the point that we are trying to avoid making which we converted into the political point of saying, *"look it should be initiated by us, if we initiated it should be carried forward bilaterally between you and me to the exclusion of everybody else unless you need their signature on a treaty amending, and that applies equally to all the Member States,"* and that is the way we think this should be done. Now we do not think that that is properly or accurately either politically or legalistically conveyed or reflected by a declaration that the United Kingdom that it has no Constitutional Authority to enter into discussions or negotiations with the Government of the Kingdom of Spain or anybody else. The reference to the Kingdom of Spain there is legalistically and constitutionally irrelevant, the statement has to be true if one replaces it with the Government of the Republic of France. That is the only distinction that we are seeking to make and we have tried to alight on language that we believe is accurate. If the hon Member were wanting to weave into this motion somehow the assertion as a matter of the proper interpretation of our Constitution that the United Kingdom is legally, now this is a Constitutional Lawyers debate, that the United Kingdom Government is legally by the terms of the Constitution and the letter of dispatch that accompanied it, prevented from altering Gibraltar's EU Status which is an international treaty without the

consent of the Government of Gibraltar, I have to tell the hon Member this that much as I would like that to be the position, much as I believe it should be the position, wearing my lawyer's hat I would have to say to the hon Member that he should not proceed on the basis that he has an open and shut case let me put it no more strongly than that and therefore we believe that this House will be better serving the interests of Gibraltar if we deal with this politically rather than try to make unsustainable legalistic assertions which can be readily dismissed as being a legalistic nonsense thereby depriving the motion of its political value and significance.

I think I have dealt with the hon Member's points, if he thinks that the use of the word *"considers"* at the beginning of paragraph (2) is too weak in a sense what I am saying to him is that I accept his point on "*consultation in the House"* I am happy to strengthen the *"calls on"* to some other stronger sentiment and there is one more point and this is about the answer. Let us be serious about this whether the Foreign Secretary answers or not is not something which is in my control, I am happy to write in language which asks for an answer, I am happy to say *"calls upon the Leader of the House to transmit the text of this resolution to her Majesty's Secretary of State for Foreign Affairs in manner that seeks an answer"* I am prepared to say in the covering letter and I look forward to your reply or please do let us have your reply, I am willing to call for an answer what I am not willing to do is use language that presupposes that there will be an answer. I do not think that he should join issue with me on that it is just a matter of semantic logic.

MR SPEAKER:

The thing is that I do not know what the amendment is, so far there is no amendment to the amendment there is none, there is only an amendment which should now be voted on.

HON CHIEF MINISTER:

It has just been pointed out to me by one of my Colleagues that in fact whereas the hon Member thinks that *"calls upon"* is too weak, he actually used the words requests, I do not know if that is any stronger?

HON J J BOSSANO:

Well, then why did the Chief Minister not take it away?

HON CHIEF MINISTER:

Well no, it is not because we have restructured the sentence that is all. The hon Member went on, he requests him to desist and give an undertaking that these will not be resumed. We were only wanting to deal with the "*undertaking"* part of this whether we use the words *"requests or calls upon"* that has just appeared that way because the sentence was being re-struck so I do not know what his position is now .

MR SPEAKER:

I do not know what the actual amendments are.

HON CHIEF MINISTER:

Mr Speaker, I am prepared to put forward the amendments that I am happy with hoping the hon Member might have signalled his views. I am willing to introduce before the word "*alteration"* on the top line of paragraph (2) the words *"formal process for the*" and then after the word "*Gibraltar"* were it appears for the first time in that paragraph add the words *"after consultation with this House."*

In paragraph (3) I am happy to move that that should read *"notes remarks made by the Minister of State of the Foreign Office and persistent media reports"* implying, no, "notes persistent media reports and"……

HON J J BOSSANO:

Will the Chief Minister give way? Let me say that the amendment to clause (2) are fine. That is the point that we are making. In clause (3) the arguments that were used for changing was that we were demanding of the Foreign Secretary an undertaking and that if we are demanding the undertaking then that is almost ensuring that we will not get one and in fact it is only in the last minute that the Chief Minister has realised that they were not demanding anything we are requesting and I suppose if we humbly beseech to have an undertaking then he will not take offence of us growing too big for our colonial shoes but I think it is desirable that we should make it clear that we want a commitment that they will not carry on not simply ask them not to carry on. I think if *"undertaking"* is considered to be too much to expect of him then I suggest words along the lines taking into account what has been said by the Chief Minister that (3) should read "*notes that public statements attributed to Ministers indicate that the possibility of a change in Gibraltar's terms of membership is being considered in the current Anglo-Spanish discussions"* because I think an important thing is that if we take the amendment that has been made to paragraph (2) where as if we take paragraph (2) to be the antithesis of discussing the Anglo-Spanish process on the basis that it is not a Gibraltar initiative then of course by restricting the scope of (2) by saying it is only the possibility of a formal process that is the one that we discuss in the House, then I think that limitation should not apply to them discussing it with Spain. From our point of view the Government of Gibraltar is free to explore whatever they want with the UK and if there is something formal we would expect to be consulted but the UK is not free to do the same exploration with the Kingdom of Spain as it has the right to do with the Government of Gibraltar, so I think we would like to see in clause (3) a reference to the possibility of a change in our membership currently having been considered in the Anglo-Spanish discussion and then perhaps ask him in his reply to confirm whether such discussion has taken place and to confirm his agreement that the matter will not be pursued any further rather than use words like *"undertaking"* or anything else but I think it is important not only that perhaps to seek or get an official confirmation or denial, the Foreign Secretary presumably could write back and say "*no we have not discussed any such possibility with Spain"* so maybe we should ask him to confirm or deny what has been said and that if he confirms it to confirm his acceptance of the request that we are making by calling on him not to desist. Really I do not think that the Foreign Secretary can feel obliged by language like that to have to say no. The purpose of the original thing was in fact to request an undertaking on the basis that we are asking him to do something that we want to know if he is going to do it or not.

The House recessed at 11.45 am

The House resumed at 11.55 am

HON CHIEF MINISTER:

Mr Speaker, there has been circulated a clean version of our amendment with further amendments endorsed upon it which the Leader of the Opposition has indicated to me they would agree to. I move that the amended motion be further amended to read as follows:

"This House –

(1) Notes that the terms of Gibraltar's accession to the European Union were agreed between the United Kingdom and

Gibraltar fourteen years prior to the entry of the Kingdom of Spain.

(2) Declares that the possibility of any formal process for the alteration in these terms of membership should only be initiated by a request from the Government of Gibraltar after consultation with this House and then dealt with bilaterally between Gibraltar and the United Kingdom, subject to the subsequent approval by all Member States of the EU to any required amendment to the Treaty Establishing the European Community and to the UK's Treaty of accession thereto.

(3) Notes persistent media reports and remarks by Mr Peter Hain, FCO Minister, implying that current Anglo-Spanish discussions may include the alteration of Gibraltar's terms of membership of the European Union AND CALLS ON the British Government to clarify whether this is the case, and, if so to desist from such discussion of this issue.

(4) Calls upon the Leader of the House to transmit the text of this resolution to Her Majesty's Secretary of State for Foreign Affairs in manner that seeks an answer and to inform the House of any reply that he may receive."

Question proposed.

HON J J BOSSANO:

I think it is very important that we do not allow the United Kingdom Government to get away without clarifying the position and without giving us a formal reply and without not being in a position to inform the people of Gibraltar of what is the state of play. One point that I think needs to be emphasised is that it is quite obvious from the nature of the debate that the United Kingdom Government have not informed the Government of Gibraltar of what it was up to and that therefore if we get clarification now we will be getting clarification on this and our initiative and I think it is bad enough that the United Kingdom Government should take it upon themselves to enter into such discussions with Spain and frankly it is adding insult to injury that they should do it and not even have the decency to tell the Government of Gibraltar what they are up to and the Government of Gibraltar should have to rely on press statements and that is not acceptable and I think it should be recorded as our view.

Question put. Amended motion carried unanimously.

ADJOURNMENT:

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

MR SPEAKER:

Before that we have got matters to be raised on the adjournment.

HON J J BOSSANO:

Mr Speaker, I gave notice of my intention to raise on the adjournment of the House the question of the announcements that have been made in the United Kingdom in respect of Gibraltar's enfranchisement for the 2004 European Elections. Mr Hain recently said in answer to questions that the United Kingdom Government had been in contact with the Government of Gibraltar and were seeking an early meeting to establish what would be required in terms of legislative and practical arrangements to ensure the European Parliament enfranchisement is extended to Gibraltar in time for the 2004 and that suggests that what we are talking about is the

mechanics of this, however at one stage in the Foreign Affairs Committee they gave some indication that here was no decision yet as to the constituency and I believe that that is a more important issue because I believe we ought to have some discussion as to if we have got options were we are likely to make most effective our voice and our being heard and the opportunities that they may give us particularly in the current circumstances, the situations that we face and the need to put a view across in the United Kingdom.

I would therefore suggest to the Government that a way should be found for us to be able to discuss alternatives informally. On the question of voting rights again we are seeing a similar position to that which we saw and I mentioned in relation to my substantive motion on our accession to the European Union the process was started under one Government, there was an election and the process was continued by the subsequent Government. In the case of the Euro vote the case went up before the European Court of Justice in our time and it was concluded in the time of the Chief Minister and the same line was taken by both governments in defence of those rights. When we petitioned the House of Lords on this matter it was done on the basis of a consensus between the two sides and consequently I would suggest that we may have an opportunity to discuss not the mechanics of it but the political advantages of pursuing a particular route perhaps when we meet for the Select Committee of the House on the Constitution. If we can agree that when we finish the formal work of the Select Committee at any particular time, we can informally discuss some of these issues, it gives us an opportunity for the five of us who are there to look at different possibilities on behalf of the two sides of the House and I would welcome an indication from the Government that they would be willing to enter into such a process. I am just suggesting that as a practical and convenient thing since we meet more regularly on that basis than we otherwise do, the whole point is that we should be able to discuss or talk on the phone or write to each other or do something as to how we are going to tackle the constituency angle which was mentioned by Mr Hain only once in his evidence to the Foreign Affairs Committee but if we have got an opportunity there maybe not to be put in an area where we will be completely lost, I do not think we should let such an opportunity to let us go by.

HON CHIEF MINISTER:

Mr Speaker, I am happy to consult with the hon Member on this or any other issue that he wishes to consult with me about and if the hon Member's approach on this issue suggests a pre-disposition now to engage in that sort of consultation between the Chief Minister and the Leader of the Opposition then as far as I am concerned he is pushing at an open door. I am very happy, I would not be in favour of doing it in a way that enabled others to perhaps mistakenly think that it was formally part of the Select Committee's work but certainly I am very happy to consult with the hon Member by some means that we can agree between ourselves on this issue. There is a meeting set I do not know if the date has been fixed but certainly early in the new year there will be a meeting between Home Office officials who lead the United Kingdom on these issues and Gibraltar Government to deal with the mechanical aspects, particular UK Constituency to which Gibraltar is added and we have made a great fuss with the British Government to ensure that it should not just be the people of Gibraltar that are enfranchised but that the territory of Gibraltar must be physically included in the definition of the territorial definition of a United Kingdom Constituency.

The decision as to which constituency is formally actually the Boundaries Commission as opposed to the Government, I suspect on the basis of casual remarks not on the basis of any formal discussion with the British Government that they may be thinking in terms of the London region which from the point of view may not be the best one from the point of view of ability to participate even in the political debate, I would much prefer sort of south west but anyway those are precisely the sort of issues that the need to be discussed certainly I acknowledged that the Hon Member's Government initiated the Mathew's case but he will recall that he had not had time to formulate the case itself

before the election and that Michael Llamas and the Government did that after 1996 but certainly I recognise that the decision to challenge the exclusion in the courts and to start the action in terms of issuing of the writ was initiated by the hon Member even though the election intervened before the arguments had actually been formulated and submitted in terms of a statement of claim or pleadings. There are actually quite a lot of issues not just the choice of Constituency, there is a whole range of issues relating to how Gibraltar is a franchise, Gibraltar law, United Kingdom law, the need for the Gibraltar law if one does it separately to be identical to United Kingdom laws, indeed the need for us in terms of European elections to have electoral rules which are different to our House of Assembly elections because of course if we are taking part in an election as part of a United Kingdom we cannot have our own separate rules about funding of elections, rules for standing, rules for counting votes, forfeiture of deposit rules, all of these things have to be done as per the United Kingdom so there are quite a lot of issues that arise once one descends into the logistics and I am very happy to keep the hon Member abreast of those as they arise.

MR SPEAKER:

I now call upon the Hon J C Perez.

HON J C PEREZ:

Mr Speaker, the announcement by Gibtel and Nynex of the increases to local telecommunications charges was made on the 1st November when it was impossible for us in the Opposition to have put questions for this meeting of the House on the subject matter. However, I managed to briefly raise aspects of it during supplementary questions and was told by the Hon Mr Britto that the increases arise as a result of a requirement by the European Union to rebalance costs in order that each product of service should pay for itself. The press release issued by the two companies jointly attempts to justify the hefty 20 per cent increase in local charges by saying that European legislation requires pricing of each product service to be justified, non-discriminatory, proportionate and transparent to the satisfaction of the Gibraltar Regulatory Authority. The fact of the matter is that in this so called re-balancing exercise neither this House nor more importantly the public at large, the telephone subscribers have been told what the breakdown in the cost structure is and what product of service is being made self-financing or why and under what part of the relevant directive this needs to be done now. Indeed the Minister could not tell us whether the revenue from Internet which is in fact a local call was included or not as part of the local traffic in the so-called re-balancing exercise.

Mr Speaker, Nynex has not provided international traffic services other than calls to and from Spain which in financial terms is on a sender keeper basis. The international traffic has been carried unaccounted for separately by Gibtel via an interconnecting agreement with Nynex. The gross subsidy that there could be therefore in connection with the provider of the infrastructure should be less than if that were not the case. Mr Speaker, I have to ask the obvious question, if historically each company has provided these services separately and they still do, what is the re-balancing exercise about, is it that Nynex are loosing money in the local telephone business? We need to have a detailed breakdown of revenue and expenditure of each of the services or products with an accurate and specific description of it and allow us and the public to judge whether these re-balancing exercise is at all necessary which we feel it is not. We are told this is only a first phase on the re-balancing exercise clearly indicating that there are more increases in local charges to come. Is it that the line rental which is a monthly charge one pays to have a right to a telephone regardless of the use one makes of it, is it that this alone needs to be self-financing in this so called re-balancing exercise? Historically this rental used to finance the terminal equipment provided that is the telephone itself now this is paid for separately at the time of connection when there is also a connection a separate charge for the connection itself. Is this a product service itself or is it part of the income of a wider product service which covers all aspects of

local usage? None of this has been explained, yet if one looks at Directive 96/19/EC which is the one on which the argument for re-balancing is based on, it states that "*where such re-balancing cannot be completed before the 1st January 1998 the Member State concerned shall report to the Commission on the future phasing out of the remaining tariff imbalances, these shall include a detailed time table for implementation.*" Mr Speaker, I would ask the Minster whether indeed Gibraltar has reported to the Commission its intention to phase out tariff in-balances and if so what is the timetable for implementation and what are the components for these so-called re-balancing. The public have a right to these details. If on the other hand this has not been done we find it hard to understand what this re-balancing exercise is about given the profits made by Gibraltar Nynex over the last few years which have permitted some hefty dividend payments to shareholders. I ask again is it that the local telephony is loosing money? We have been told Mr Speaker that this exercise needs to be done in order to pave the way for liberalisation, it seems to us that the increases in local charges are a response to the liberalisation that already exists in the international traffic with call-back services with the companies trying to recover revenue loss from cuts in international charges forced upon them by market conditions, by increasing charges where they still hold the monopoly which is in my view an unnecessary exercise given the huge scope for reductions in international charges that exist if the Gibtel dividends payment to shareholders is a reflection of the profit margins involved. If indeed we were preparing for liberalisation in the local telephony service which is what the directive is all about, one would think that the wise thing to do would be to lower charges not to increase them. Is it that there is someone applying for a licence saying that the charges are too low to go into competition? Surely the reasons for liberalisation and competition is to bring down charges, how can increasing charges pave the way for liberalisation?

Notwithstanding all this there is an aspect of even greater importance which cannot be forgotten when looking at the arguments being used to justify these increases. The directive in question clearly states that the liberalisation of the local telephony service is the direct result of pressure from companies in other Member States wanting to provide cross-border services. The directive states "*the abolition of exclusive and special rights as regards the provision of voice telephony will in particular allow the current telecommunications organisations from one Member State to directly provide the service in other Member States.*" In another relevant paragraph it says *"It is likely that most new entrants will originate from other Member States and that such a merger would in practice affect foreign companies to a larger extent than national undertakings. This reference is made in relation to the restrictions put on establishing own infrastructure."* The point being that before Gibraltar gives effect to this part of the liberalisation measures it must seek a commitment from the EU that if, for example, Telefonica is to be allowed to provide cross-border services into Gibraltar, Nynex, Gibtel, Gibnet, and any other established local telephone company will be allowed to do likewise, that is to provide cross-border services from a base in Gibraltar to Spain. In any case since Spain sought and achieved a five year transition period starting in January 1998 it would not be in a position to provide these cross-border services itself until January 2003. The so-called re-balancing of tariff is to open up liberalisation if indeed the so-called re-balancing of tariffs is to open up liberalisation we should not be doing this until and unless we can guarantee our own telecom companies a level playing field. It seems to me that the present political climate does not auger well for that to happen. There is an even greater reason why this exercise of re-balancing should not be proceeded with if indeed its object is the implementation of Directive 96/19/EC. Clause 11 of the directive states the following *"Newly authorised voice telephony providers will be able to compete effectively with the current telecommunications organisations only if they are granted adequate numbers to allocate to their customers."* Clearly Gibraltar is not today in a position to be able to do this and we all know why, in summary we think that if indeed it is true that the increases in charges respond to EU obligations they should in our view not proceed because Gibraltar is not in a position to implement the said directive as a result of Spain's illegal non-recognition of our international country code. In any event before we do so we

must ensure that telecom companies based in Gibraltar will be able to provide the same cross-border services into Spain that Spanish companies are to be allowed to provide in Gibraltar. From a purely political perspective we think it is wrong that the Commission should have been sitting "*on its hand for six years*" words of the Chief Minister not mine, when it comes to the non-compliance by Spain of EU law in telecommunications and that this same Commission and Commissioner should be insisting that we comply with our obligations although clearly we are unable to do this because of their own reluctance to commence legal proceedings against Spain. Notwithstanding this we feel this so-called re-balancing exercise is in any case unnecessary even if it were responding to liberalisation which we believe it does not.

HON LT COL E M BRITTO:

The two points that have to be made up-front are as follows, firstly a lot of what the hon Member has said today would have been more appropriate to have been signalled at the time the legislation was brought to this House. The Telecomms Ordinance was brought to this House because the whole re-balancing exercise, the whole question of tariffs is now Gibraltar law contained in the Telephones Ordinance as required by the directive. On the context of the press release that the Opposition has put out earlier on this week to say that there is no justification for the releases, the justification is entirely there, this is now a matter of Gibraltar Law and the Company is acting within the law but I will say although it has not been said today that one of the points that the hon Member has made public in his press release asking the Government and myself personally to take political responsibility for these increases and what I would say to the hon Member is what this Government take responsibility for and I take responsibility for, is having stopped the increases in local calls for the last five years. When the hon Members licensed Gibraltar Nynex in 1990 they included a clause in the licence which gave Nynex automatic right to increase telephone tariffs as from two years after the licence was signed. As soon as the two years, within months, of that two year limitation being applied the Government of the day, the Government sitting in Opposition today allowed those increases and those increases were of the order of 25 per cent. Not only did they allow the increases but they allowed a suspension of their own conditions and they allowed a projection of one year forward to estimated inflation one year forward to allow for higher increases as were allowed at the time under their own licence that they had issued and since I came in as chairman and as Minister in 1996 I have effectively convinced and stopped our partners in Gibraltar Nynex from raising local charges. On the contrary or should I say as well as stopping local charges we have as a Government decreased international charges five times during the last five years and today the local international charge stands at 29p which is less than half the 60p it stood at in 1996 when this Government came into office.

We also take credit for bringing together a merger at no cost to the Government which has also been queried by the Members and without any obligatory redundancies by any members of the staff, and as to the song and dance that has been made by Opposition Members as to the scale of the increases, let me say that despite all this scaremongering and flag waving of 20 per cent increases what it is actually in figures is one tenth of a penny per minute in the cheap rate. The Leader of the Opposition knows as well as I do that one can use figures whatever way one likes but effectively because the free allowance has been maintained it is estimated that the cost to the average household will be of the scale of 2 per cent increase in the monthly bill and this is because over 70 per cent of local households use the phone to make international calls and because of the substantial over 20 per cent decrease in international calls at the same time as this increase in local calls the effect will be of 2 per cent and in fact in the case of pensioners on rent relief, they will actually experience a drop in their phone bill because of the doubling of the phone allowance that comes into place at the same time.

We have been asked or told in public by Oppositon Members that there is no evidence for these increases that these increases are justified or required by EU law and I can refer Members to Regulation 12 of the Telecommunications Competition Regulations 2001 which transposes into law EC Directive 90/3380/EC as amended by several other directives and which refers to the requirement for the re-balancing of tariffs. I also refer the hon Members to Regulations 18 and 19 of the Telecommunications Open Network Provisions Voice Telephony Regulations 2001 which transposes into the law of Gibraltar EC Directive 98/10 which sets out the tariff principals that have to be followed for organisations having significant market power and the cost accounting principals which have to be followed. Mr Speaker, the annexes to Council Directive 93/87 say very clearly the tariffs must be based on an objective criteria and must in principle be cost based. The article 4C of Directive 96/19/EC says very clearly that Member States shall allow companies to adapt current rates which are not in line with costs and which increase the burden of Universal Services provision in order to achieve tariffs based on actual costs. I could go on, I purposely did not extract a lot of other references because they would be irrelevant but what is very clear is that what has in fact happened in the rest of Europe where the situation dates back to the early 1990's when in fact the hon Member was Chairman of Gibraltar Nynex. As far back as 1992 in a communication on tariffs the Commission set out guidelines for cost orientation and adjustment of price instructions and said that this billed on the principles in the OMP directives that tariffs should be cost orientated. It called for European telecommunications operators to undertake major tariff reforms to correct historic imbalances and said that rebalanicng was a crucial element of the preparation for a liberalised telecommunications environment in 1998. In 1995 the Council invited Member States to foster the establishment of dynamic competition for promoting the necessary re-balancing of tariffs and in effect throughout Europe what has happened is that this tariff re-balancing exercise which has happened in the rest of Europe which we are way behind because as Members know we have been late in transposing those directives throughout the whole of Europe this tariff re-balancing has meant lower prices for international and longer distance calls and generally increased the charges for local calls particularly during peak periods, and also the basic connection and rental, there has been a corresponding increase in one and a lowering in the other and as far as the position in Gibraltar is concerned the position is very simple. There is now a requirement by law for this to be done and following the enactment of the Telecomm Ordinance Gibraltar Nynex was required by the regulatory authority to rebalance telephone tariffs so that these are cost orientated. That is based on the actual cost plus a reasonable rate of return and the Regulatory Authority has required Nynex to provide a separation account to satisfy itself that there is no cross-subsidisation between the services and the hon Member asked whether this was phase one of more increases. The Company has admitted to the regulator its increases at this stage of the increases but let us be clear, the situation is now very different to when Members were in Government or when the hon Member was Chairman. The Government now as Government do not regulate the prices, the Company is no longer able to set its own prices as it was allowed to do under the licence. The Company has to bid to the regulator and has to present evidence that any tariffs that it wishes to bring into force are cost based and have an acceptable margin of profit. To do this the Company has gone to a considerable expense and carried out a considerable accounting exercise to establish all these facts. The Regulator does not necessarily accept it at face value and in fact has not accepted it at face value, has given permission for these initial cost increases to go ahead but any subsequent costs will be a matter entirely for the Company and the Regulator and the Regulator or the Regulatory Authority I should say is the one that makes the decision whether those prices are right or wrong and I would recommend to Opposition Members that the Regulator who is transparent and independent should be approached by them directly on seeking information on levels of tariffs and on conditions on which tariffs are raised. I am being reminded that the Government are not accountable for the functions of the Regulator or for the decisions made by the Regulator who is independent of the Government and functions at arms length from the Government so any

queries or questions or clarifications Opposition Members have on regards to tariffs should be addressed to the Regulator and not to me as Chairman of the company.

On the question of detailed breakdown and justification by providing the public at large on the expenditure of the company and accounts of the Company and so on let me say straight away since July this year communications have been liberalised in Gibraltar and I have no intentions of standing up in this House, or outside this House, and disclosing information that is commercial-in-confidence to the Company. Any information of that nature should be addressed again and I said this at Question Time earlier on in this meeting, queries on it should be addressed direct to the Company that will in its commercial judgement decide whether such information is released or not released. Members should realise that, and I think do realise, that it is a commercial world out there, that the company is facing competition, in fact is already competing against unlicensed operators who are providing an international service through call-back and a number of other ways and when licences are issued this situation will be formalised but the Company has to protect itself and has to protect its employees and cannot release information which would be of value to its competitors. As regards the point made today and made earlier by the hon Member whether these increases in tariffs are in response to competition from call-back it is difficult to say yes or no. If the Member is saying whether the Company is reducing international tariffs in reaction to competition then the answer is yes, the Company is facing that competition and has to reduce its tariffs in order to meet competition, similarly any commercial company who has the ability to increase prices as it is now allowed to under the Telecomms Ordinance by remaining within the parameters of cost orientated limitations would obviously apply for increases as GNC has applied for increases to the Regulator in order to increase local tariffs, but again I repeat what I have said before let me be quite clear that any increases have to be authorised by the Regulator or Regulatory Authority independent of the Government.

MR SPEAKER:

I now propose the question put by the Leader of the House which is that this House do adjourn sine die.

Question put. Agreed put.

The House will now adjourn but I think it is appropriate for me and the Clerk and the Staff to wish you all and your families a very Happy Christmas and Prosperous and problem free New Year.

The adjournment of the House sine die was taken at 12.40 pm on Thursday 20th December 2001.