GIBRALTAR

HOUSE OF ASSEMBLY

HANSARD

14th October 2002

**(adj to 16th, 17th, 18th,October,
18th November, 5th, 19th Dec 2002
& 21st January 2003)**

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Ninth Meeting of the First Session of the Ninth House of Assembly held in the House of Assembly Chamber on Monday 14th October 2002, 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 R Rhoda QC - Attorney General
The Hon T J Bristow - Financial and Development Secretary

OPPOSITION:

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

IN ATTENDANCE:

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

PRAYER

Mr Speaker recited the prayer.

CONFIRMATION OF MINUTES

The Minutes of the Meeting held on the 30th April 2002, having been circulated to all hon Members, were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

The Hon the Chief Minister laid on the Table the following documents:

(1) The Accounts of the Elderly Care Agency for the year ended 31st March 2001;

(2) The Gibraltar Joinery and Building Services Limited – Annual Report and Accounts for the year ended 31st December 2001;

(3) The Gibraltar Regulatory Authority Annual Report 2001/2002.

Ordered to lie.

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

(1) Revolving Loan Agreement with Barclays Bank plc;

(2) Report and Audited Accounts of the Gibraltar Broadcasting Corporation for the year ended 31st March 2001;

(3) Statement of Consolidated Fund Reallocations approved by the Financial and Development Secretary - (No 1 of 2002/2003);

(4) Pay Settlement and Supplementary Funding Reallocations – (Statement No 2 of 2002/2003);

(5) The Accounts of the Government of Gibraltar for the year ended 31st March 2001 together with the Report of the Principal Auditor thereon.

Ordered to lie.

SUSPENSION OF STANDING ORDERS

The Hon the Chief Minister moved under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with a Government motion.

Question put. Agreed to.

MOTIONS

HON CHIEF MINISTER:

Mr Speaker, I beg to move the motion standing in my name and which reads:-

"This House

1. Recalls the motion unanimously passed in this House on the 25th March 2002 declaring its total opposition to any sovereignty concessions being offered to Spain against

our wishes; rejecting and condemning, as a betrayal of our rights and wishes as a people, any Anglo Spanish declaration, agreement or framework of principles which makes in-principle sovereignty concessions to Spain against our wishes; and calling on the British Government not to enter into any such declaration or agreement;

2. Recalls also that on the 18th March 2002 practically the entire population of Gibraltar participated in a public demonstration calling upon the British Government not to make in-principle concessions to Spain against our wishes.

3. Regrets and condemns the fact that despite the motion and demonstration referred to above, the Foreign and Commonwealth Secretary Jack Straw, on the 12th July 2002 informed the House of Commons that after twelve months of negotiation the UK and Spain were in broad agreement on many of the principles that should underpin a lasting settlement of Spain's sovereignty claim over Gibraltar and that these included the principle that Britain and Spain should share sovereignty over Gibraltar.

4. Believes that by purporting to enter into political agreements or declarations affecting sovereignty of Gibraltar against our wishes and without our consent, as occurred in Mr Straw's statement, the British Government violates our right to self-determination.

5. Wholeheartedly welcomes the Gibraltar Government's announcement that a referendum will be held in Gibraltar to give the people of Gibraltar the opportunity of deciding, by a formal and deliberate act and in a free and democratic manner, whether they approve or disapprove of the principle of joint or shared sovereignty of Gibraltar between the UK and Spain.

6. Ratifies, approves and joins in the calling of such a referendum and the question to be posed therein, namely:-

QUESTION

"On the 12th July 2002 the Foreign Secretary Jack Straw, in a formal statement in the House of Commons, said that after twelve months of negotiation the British Government and Spain are in broad agreement on many of the principles that should underpin a lasting settlement of Spain's sovereignty claim, which included the principle that Britain and Spain should share sovereignty over Gibraltar.

Do you approve of the principle that Britain and Spain should share sovereignty over Gibraltar?

Yes ☐ No ☐

7. Ratifies and approves the 7th November 2002 as the date for voting in the Referendum.

8. Ratifies, approves and adopts the designation of Mr Dennis Reyes, Clerk of this House, as Referendum Administrator.

9. Ratifies and approves the appointment of a committee to administer the Referendum independently of political parties, consisting of past and present senior civil servants comprising:-

(1) Mr Ernest Montado, Chief Secretary as Referendum Co-ordinator;

(2) Mr Dennis Reyes, Clerk of the House, as Referendum Administrator,

(3) Mr George Flower, Head of Civil Status and Registration;

(4) Mr John Desoiza, Head of Information Technology Department;

(5) Mr Frank Carreras, Deputy Commissioner of Income Tax;

(6) Mr Richard Armstrong, Assistant Chief Secretary;

(7) Mr Brian Catania, HEO Personnel Department;

(8) Mr Dennis Figueras, retired civil servant and previously Clerk of this House;

(9) Mr Clive Coom, retired civil servant and previously Clerk of this House.

10. Ratifies, approves and adopts the Administrative Rules attached to this Motion as the Administrative Rules to regulate the conduct of the Referendum.

11. Ratifies and approves that the following categories of persons be eligible to vote in the Referendum:-

(1) Resident Gibraltarians registered in the Register of Gibraltarians under the Gibraltarian Status Ordinance;

(2) Resident British Overseas Territories Citizens by virtue of a connection with Gibraltar;

(3) Other British Nationals who have been ordinarily resident in Gibraltar for not less than ten years immediately preceding Referendum day.

12. Ratifies and approves the appointment of the following persons and organisations as international observers for the Referendum, upon invitation by the Government:-

(1) Mr Gerald Kaufman MP (Labour) (as Chairman)

(2) Representing the British Isles and Mediterranean Region of the Commonwealth Parliamentary Association:-

- Mr Tom Cox MP (Labour), (Chairman, UK Branch)
- Sir Philip Bailhache, Bailiff of Jersey, (Jersey Branch)
- The Hon Noel Quayle Cringle, President of Tynwald (Isle of Man Branch)
- Sir de Vic G Carey, Bailiff of Guernsey (Guernsey Branch)
- Dr John Marek, Deputy Presiding Officer, National Welsh Assembly (Wales Branch)

- A representative (to be designated) of the Welsh Branch of the CPA .

(3) Representing the House of Commons All Party Gibraltar Group:-

- Lindsay Hoyle MP (Labour) Chairman
- Eleanor Laing MP (Conservative)
- Jimmy Hood MP (Labour)
- David Crausby MP (Labour)
- Andrew Rosindel MP (Conservative)
- Nigel Jones MP (Liberal Democrat)
- Colin Breed MP (Liberal Democrat)

(4) The following members of the House of Commons Foreign Affairs Committee, in their personal capacities:-

- Fabian Hamilton MP (Labour)
- Andrew MacKinlay MP (Labour)
- David Chidgey MP (Liberal Democrat)
- Sir John Stanley MP (Conservative) (tbc)

(5) The Electoral Reform Society

(6) Representing the Chartered Institute of Journalists:-

- Mr Andy Smith, President
- Mr Stuart Notholt, Vice President

(7) Representing Trade Unions:-

- Mr Bill Morris, General Secretary, Transport & General Workers Union
- Mr Paul Noon, General Secretary, Prospect
- Lord Brett, ex General Secretary, Prospect
- A representative (to be designated) of the General Secretary of NASUWT.

13. Declares the vital importance of this question to the future of Gibraltar and urges all entitled voters to cast a vote in the Referendum."

Mr Speaker, as I do not expect that this Resolution will be particularly controversial I will move certain amendments now and then subject to your guidance and perhaps with the agreement of the Opposition Members, we can speak to both the amendment and the main Resolution together. I think they will see that the amendments are not controversial.

I would also point out to Opposition Members that the annexure to the annex to the Resolution the Administrative Instrument is in slightly different form to the last version that they have seen to take account of the voting paper issue but I do not propose to move those as amendments given that they are not amendments to the Resolutions themselves. There is a letter prepared by the Clerk as Referendum Administrator setting out what the four amendments are but they all relate to the layout of the voting paper in terms that we have discussed and except I notice that there is one that was not related to that which is a small amendment to if they could turn to Form 'J', they will see that paragraph 3 has been replaced under the heading 'Instructions to Voter' in the Declaration of Identity. I will therefore move the following amendments to the motion before I deal with the motion itself and that is that paragraph 12 of the motion which is the one

that lists the observers should be amended by the addition of three categories, paragraphs 8, 9, and 10 to read as follows:-

(8) Mr Mario Galea MP, Malta House of Representatives and member of the Executive Committee of the Commonwealth Parliamentary Association.

(9) Mr Mark Seddon, Member of the UK Labour Party National Executive Committee and Chairman of the Tribune Group.

(10) Such other persons or organisations as may accept the Government's invitation prior to Referendum day.

And the second amendment is not an amendment to the Resolution as such but to the Administrative Instrument which I did not mention before. The hon Members will notice it is not an amendment but I just bring it to their attention because it differs to the last version of that document they saw that in paragraph (9) 2 the reference to 5 has been substituted for a 7 that has not been done, that requires to be done so that is a change that needs to be made even to the latest text that they have seen so that will read, *"……..a period not less than seven days prior to the Referendum."*

Mr Speaker, the House will be aware of the position that the Government have adopted since the autumn of last year in their campaign to lobby, persuade, try and prevent the British Government from entering into declarations, frameworks, agreements of principle affecting our sovereignty and our political rights as a people against our wishes and the Government have also made clear on several occasions that this is not a question of sovereignty changes actually being implemented in practice against our wishes because we know that for any implementation of any sovereignty change the British Government are committed to relying on our referendum approval of it. So, the issue has never been the physical implementation of sovereignty changes against our wishes. The issue has always been the damage and prejudice that is caused to our future advocacy and defence of our political rights as a people that the British Government should feel that it is free and should act as if it were free to negotiate and transact what are our political rights as a people against our wishes and that they should make in-principle concessions against our wishes because it is axiomatic that to the extent that the British Government purport to enter into political agreements that suggest that they are free to act in a way which was incompatible with our right to self-determination that what they are in fact doing is sending a signal that we do not have the right to self-determination.

On the 12th July, Mr Straw stood up in the House of Commons and said that Britain and Spain were broadly agreed about the future that should underpin Gibraltar's future including the principle of joint sovereignty. I would urge Members of the House to ask themselves this question, "*Do you think Mr Straw would have felt just as free to stand up in the House of Commons and say I have been to Washington, I have been in negotiation with the Government of the United States and the Government of the United States and Britain are broadly agreed that the future of the territory and people of Bermuda includes the principle that Britain and the United States should share sovereignty of Bermuda?*" The answer is that there is no prospect whatsoever of any British Government making such a statement or entering into such a declaration because it would obviously be incompatible with the right to self-determination of the people of Bermuda and I say that there is no difference in terms of the political rights of the people of Gibraltar and the people of Bermuda in the context of self-determination. Even if as the hon Members know Gibraltar contests, but even if and even for those people who argue that the Treaty of Utrecht curtails our right to self-determination, not

even for those people should Mr Straw's statement be acceptable because even if the Treaty of Utrecht means that our right to self-determination is curtailed as the British Government says it is curtailed, namely and only by the fact that we cannot opt for independence, then why does a Treaty that at best, which is arguable, says that we cannot have independence, why does that enable the British Government to negotiate the sovereignty of Gibraltar above the heads and without the wishes of the people of Gibraltar who have not asked for independence. Whatever may be the meaning and effect of the Treaty of Utrecht properly interpreted which we are willing to have litigated but Britain and Spain are not, whatever might be the meaning of that document it does not sustain, require, or justify the transaction of our sovereignty and of the principles applicable to our future against our wishes. So when Mr Straw stood up in the House of Commons on the 12th July and gratuitously and I say *'gratuitously'* because he did not even have an agreement to show for it. Not that it would have been any more acceptable to us if he did or if he had had but without even having an agreement, without even having a quid pro quo, without even having Spain's signature on a scrap of paper, Mr Straw announces to the world that it is the policy of the British Government that in principle the future of Gibraltar should be resolved by Britain and Spain sharing sovereignty.

The Government of Gibraltar believe that the people of Gibraltar are massively opposed to the principle of Spain participating in the sovereignty of Gibraltar but I would say for the benefit of anybody who may hear the words exchanged in this House in the run up to this Referendum, that leaving to one side and regardless of the question of Spain, regardless of the question of Spain and in addition to the question of Spain, joint sovereignty is not the way forward for Gibraltar. Even those people in Gibraltar who favour a settlement, even those people in Gibraltar who favour dialogue, even for those people in Gibraltar who favour good neighbourly links and co-operation and friendship with Spain, joint sovereignty is not the way forward. Joint sovereignty in the Government's judgement condemns our future generations to a near colonial status. It condemns Gibraltar to being and being treated for all time as a chattel as a possession of others. For all intents and purposes the substitution of our current colonial status, one can change the name, but the status is colonial except that we will have two and not one so called administering power and the suggestion that all this could be neutralised, as I say even leaving to one side the Spanish issue but the suggestion that this can be neutralised by the idea that Gibraltar can have more self Government is an absurdity in the context of the European Union which results in most of our internal affairs being in effect as far as Britain and certainly as far as Spain would argue it an external affair which would become part of their responsibility and not ours. So, for the people of Gibraltar to be offered as one of the alleged inducements greater self Government is a complete distortion of the reality because the reality is that even if given that, most of Gibraltar's affairs as the affairs of the United Kingdom and others are EU related and that the EU increasingly treads into more and more areas of public life, legislative, executive spheres, and that that is going to continue to be so, the areas in which Gibraltar will actually be able to exercise greater degrees of self-Government will shrink and shrink and shrink and even if it were the case that Britain is today willing to gloss over the Constitutional distinction between internal and external and allow us in large measure to continue to exercise domestic competence in matters of the European Community one can be sure that Spain will not take the same view. Therefore, Mr Speaker, this Referendum is not about settlements with Spain. This Referendum is not about dialogue. This is not a Referendum as some people believe it is about whether this is the last chance saloon for Gibraltar, this Referendum is about whether we believe that Britain and Spain sharing the sovereignty of Gibraltar is (a) what the people of Gibraltar want and (b) whether it is what the people of Gibraltar want because it is in Gibraltar's best interest. The Government plainly believe that it is not so.

As the motion recites the statement by Mr Straw in the House of Commons on the 12th July was in direct defiance of the will of the people of Gibraltar expressed openly and clearly with heartfelt

passion and with plea. It is also, although this is not for the first time, a defiance and ignoring of the unanimously expressed will of this House. That at least is not for the first time but certainly I think it is for the first time that the entire population of Gibraltar should ask something not to happen in a demonstration and that within months that very thing should be perpetrated and visited upon us by a Foreign Secretary of the British Government. I think the House is entitled to both regret and condemn the statement by Mr Straw on the 12th July as recital (3) of the motion does and on the basis of what I have just said I believe that the House is also entitled to declare as in recital (4) that Mr Straw's statement amounts to a violation of our right to self-determination because it is genuinely thought that we have the right to self-determination. Even if the right to self-determination curtailed us to independence he would not be free to have a unilateral statement, bilateral between them unilateral in the sense that it excludes us, of the principles allegedly applicable to the political future of Gibraltar and it is worth remembering that the formal position of the British Government last stated in the House of Commons on the 6th November in answer to a question by a Labour backbencher Mr David Crausby, and stated every year most recently in May of this year by the British Government to the Covenant Committee for civil political rights and the economic and social rights of the United Nations in Geneva which I addressed earlier this year also in that document the British Government give the same answer on the question of what are our rights to self-determination as they gave then to Mr David Crausby on the 6th November in the House of Commons and they say, "*...of course the people of Gibraltar have the right to self-determination but because of article 10 of the Treaty of Utrecht they cannot opt for independence without Spanish consent.*" Let us leave to one side the caveat except that they cannot opt for independence without Spanish consent. We question it but we are not asking for independence so the caveat is not invoked. If one removes that caveat there is an unqualified statement of the right to self-determination of the people of Gibraltar and that right to self-determination even as subscribed to or allegedly subscribed to by the British Government is violated by Mr Straw's declaration because Mr Straw can only be doing one of two things on the 12th July either he is violating our right to self-determination or he is purporting to settle a territorial sovereignty dispute ahead and in priority to our right to self-determination and at the expense of our right to self-determination and both are objectionable in equal measure.

Mr Speaker, the language in recital (5) "*.....wholeheartedly welcomes the Gibraltar Government's announcement that a Referendum will be held in Gibraltar to give the people of Gibraltar the opportunity of deciding, by a formal and deliberate act and in a free and democratic manner, whether they approve or disapprove of the principle of joint or shared sovereignty of Gibraltar between the United Kingdom and Spain,*" is not in concept new language. We have chosen it because this House passed a Referendum almost in exactly the same terms in 1967 on the occasion of the Referendum at that time and reading to the hon Members from the minutes of the House it says, "*....the Chief Minister moved the following motion – That this House whole heartedly welcomes the British Government's announcement that a Referendum will be held in Gibraltar to give the people of Gibraltar the opportunity of deciding by a formal and deliberate act and in a free and democratic manner which of the two alternatives to be offered by the Referendum will best serve their interests for the future.*" And given that this House wholeheartedly welcomed the British Government's announcement of a Referendum in 1967 we thought it would be a nice touch if this House were to warmly welcome the same decision by Gibraltar's own Government in the circumstances which we all know currently prevail. Therefore in paragraph (6) the House ratifies, approves the decision of the Government to call a referendum and joins in the calling of such a referendum and also in the question to be put which has already been read and I will not read again the first paragraph is the relevant recital from Mr Straw's declaration of the 12th July and the second paragraph is the formulation of the question in its simplest form. Government understand and appreciate that the Opposition Members may have put a different question and indeed on different issues but the Government having made the decision

that the Referendum should be limited to the issue of joint sovereignty which is what has triggered the Referendum I hope the hon Members will agree that that is the simplest and shortest formulation of that particular question. The House ratifies and approves the date, the appointment of the Referendum Administrator, the appointment of the Committee of civil servants to run the Referendum and the rules under which it will be done. This document called Administrative Instrument to the Referendum Rules is based on both the 1967 Referendum Regulations promulgated by the British Government and also where the circumstances are different and require it our own electoral rules, in Gibraltar. The Referendum Rules 2002 will be an administrative instrument, they will enjoy if passed in this House attached to this motion, political parliamentary cover but they will not have the force of law and therefore because they do not have the force of law they do not contain any of the usual rules creating offences. Hon Members will be aware that under the General Election Rules there are a lot of offences misbehaviour, fraud, dishonesty in answering questions those sort of things that create offences with fines, because this document does not enjoy the force of law it does not contain any such issues nor does it contain issues which would give a right of access to the courts of law. In other words this is a politically convened Referendum with the support of the Legislature of Gibraltar, the political support of this parliament if we pass this motion and we are agreeing informally a set of administrative rules and guidelines by which the civil servants running the Referendum will be guided so that people will know that there is a formal structure and regime and that that follows very closely the normal election procedures in Gibraltar.

Paragraph (11) recites the three groups of people that will vote. Hon Members will recall that in the 1967 Referendum convened by the British Government only resident registered Gibraltarians were allowed to vote and there has been some issue this time round as to whether that should be extended to non-resident registered Gibraltarians. There has been some controversy I would simply wish to repeat for the purposes of Hansard in this House what I have already said publicly in another place and that is that this is an issue upon which the Government have consulted as widely as it was possible to consult, that there is a massive consensus of view, that the vote should not be extended to non-resident Gibraltarians, that none of the people that expressed those views and obviously the hon Members will speak for themselves later but I believe that when they offered the Government advice it was as true of them as it is of us. That no Gibraltar political party has anything to gain by suggesting that the non-resident Gibraltarian should be excluded and I am entirely satisfied that everyone that has offered the Government advice on this issue including the Government itself because that was our view as well has been motivated on that question exclusively by the wider and longer term interests of Gibraltar and that certainly all the affected people who felt strongly of all the ones that have approached me some of them met me in London when I have been here and there and some have stopped me here in the street, when I have explained to them the reasons which motivate this decision almost all of them have agreed and accepted that it is on balance in the best interests of Gibraltar that it should be so.

The other issue that has arisen in respect of the right to vote is this business of extending the franchise to resident British subjects. There is an issue there but ultimately the Government's decision reflects the view that the concept of citizenship has changed and has evolved in the last 30 or 35 years and that given that what is at stake is our British sovereignty that it is right that non-Gibraltarian British nationals who have demonstrated a commitment to Gibraltar as their home should have a say in this Referendum, of course the number of years due attached by way of residence to demonstrate that fact is a matter of opinion and choice. Hon Members may wish to be aware that there were organisations that we consulted in the Council of Representative Bodies that were suggesting that it should be just three years others were saying five, others were saying 15, we believe that 10 is a reasonable period of time. Someone that has been resident in Gibraltar for 10 years is unlikely to be here because of a

posting. Most jobs do not post people abroad for as long as 10 years and therefore it is likely that they are here because they regard Gibraltar as their home and that decision has been made and I hope that it will be accepted by all as a necessary social evolutionary phase of the concept of who constitutes the community and people of Gibraltar.

I hope the hon Members will share my view that there is quite an impressive list of observers. We would have liked to have a few more non-British or British connected observers but the reality is as I am sure the hon Members will understand that there is this concern amongst third countries not to become involved in what they consider to be a dispute in which there is nothing for them and the tendency just to sort of keep one's head below the parapet wall and not alienate and not upset the British and the Spanish governments is a strong feature. Let me say that we have the best sort of evidence to suggest that the British Government have tried to discourage even some of the people that are on this list from accepting their appointments and therefore I think it is a credit to the very considerable number of high ranking people, the speakers of all the parliaments of the Channel Islands, Jersey, Guernsey, the Isle of Man, representatives from all the parliaments in the British Isles only Cyprus is missing, Labour, Conservative and Liberal Democrat MPs, the Electoral Reform Society which is proving very useful to us, the Chartered Institute of Journalists, British Trade Unionists and the other people that I have mentioned. I would like to extend my gratitude to the Leader of the Opposition for having recruited Mr Mark Seddon the Member of the UK Labour Party National Executive Committee to serve on the panel of observers. One thing will be clear and that is, that when this Referendum has been held under the auspices of this impressive and august list of people it will not be open for anybody with credibility to seek to impugn the result on the basis of the conduct of the Referendum if and when this panel of observers has as we would expect it to confirms that the Referendum has been properly and fairly conducted.

Finally, Mr Speaker this motion declares the vital importance of this question to the future of Gibraltar and urges all entitled voters to cast a vote in the Referendum. This Referendum is ultimately about whether what should prevail is the rights and aspirations of the people of Gibraltar and our future generations or the pragmatic management of Anglo-Spanish relations within the European Community on the other. We believe that there should be good Anglo-Spanish relations, we think that it is good that European Community business should be properly and conveniently conducted but what we do not think is right is that either of those things should be procured at the expense of the principles applicable to our political rights as a people. This Referendum is therefore about whether people believe that in the name of parking this problem if indeed they are not going to do their declaration, there are two options, either the British and the Spanish governments do their declaration of principles which has still not been done bilaterally in which case they would have done it in the face of the Referendum result whatever it turns out to be, or alternatively they will not sign this declaration of principles and if we do not have this Referendum the matter will be kicked into the long grass on the basis of Mr Straw's statement of the 12th July. In other words, not removed, not the damage undone, but put in suspended animation on the basis of a statement by the British Foreign Secretary that Britain thinks that the right thing to do is to share sovereignty so that the next time that the moment is judged apposite to revisit this issue that will be the starting point and in the meantime in effect the British and the Spanish governments which refuse to submit to judicial analysis of our claim and our rights to self-determination will have resolved those questions against us in the political court because frankly it will be very difficult for Gibraltar with any prospect of success to continue to politically advocate for its right to self-determination when Britain signs up to a political declaration that says, "*...I the administering power believe that the correct principle applicable to the Resolution of the future of Gibraltar is that the colonial power (Britain) and the third party territorial claimant (Spain) should share the sovereignty of Gibaltar.*" If we do not have this Referendum and they do not do their declaration of principles that

would be the last word on the matter, Mr Straw's July declaration, will be the last word on the matter for as long as they decide and I believe and this is why the Government principally have convened this Referendum that the people of Gibraltar need to answer Mr Straw's statement of the 12th July. So, that if they do not do a declaration the will of the people of Gibraltar democratically expressed will be the last event to have occurred rather than Mr Straw's statement on the 12th July so that if there is any kicking into the long grass or freezing of the position it would be frozen on the basis of our Referendum result and not on the basis of the statement of the 12th July. I commend the motion to the House.

Question proposed.

HON J J BOSSANO:

Mr Speaker, as is known we shall be voting in favour of this motion and we shall not be seeking to move any amendments since we have already transmitted to the Government the areas of the original draft and these have been incorporated in some of the changes that have been announced today. My contribution in support of the motion therefore is not going to consist in questioning the way the Government see the situation but in simply exposing the way the Opposition Members see it which does not coincide 100 per cent with the Government's analysis but irrespective of the fact that the analysis might be different the conclusions are the same. We do not agree with that analysis precisely because we have not been in agreement on what the Brussels process was about for a very long time. When the Chief Minister first stood in 1991 he saw nothing wrong at all in the Brussels process although I think with the passage of time he has been seeing more things wrong with it than he did at the beginning. Even the 12th July statement by Jack Straw does not appear to have convinced him totally that what Jack Straw was telling the House of Commons on 12th July was that the only possible negotiations under the terms of the Brussels Agreement were the negotiations Spain has been saying were intended since day one. The fact that Jack Straw has said on the 12th July the United Kingdom is willing to enter into an agreement to share sovereignty with Spain is the first time that the British Government have said that they are willing to do it but the sharing of sovereignty with Spain was proposed by Spain the day the frontier opened in February 1985 and the British Government did not say 'No' instantly it took a lot of pressure from Gibraltar and a lot of years before they actually rejected it and they rejected it even then not with a flat 'No' as we would have wanted them to, they rejected it even then by saying that it was not an acceptable basis for the negotiations because it predetermined the final outcome. So, if we take the rejection of the Moran proposals which said we are against joint-sovereignty because it predetermines the final outcome because it is with an expiry date of the joint sovereignty what they were objecting to was the expiry date not the joint sovereignty and what Jack Straw has told the House of Commons we will not accept joint sovereignty with an expiry date. We will accept joint sovereignty if it is, at one stage it was said or indicated that it was forever and subsequently it became durable whatever that may mean, of course Matutes has already been hinting at a 100 year shared sovereignty deal I do not know whether 100 is durable or not durable in the terminology or the definition of the word durable by the Foreign Office but if 100 years is taken to be durable then in fact what Jack Straw was signalling was that the Matutes proposals which had not been rejected in July when the Brussels Process was relaunched were effectively capable of being accepted as part of a wider package which included other things. So, we are dead against the Jack Straw statement because we have been against everything that the British Government have been doing since they signed the damned Brussels Agreement in 1984 which has been a disaster for Gibraltar.

The Chief Minister said that it was the first time that the British Government had ignored a demonstration by the people asking them not to do something and they had gone ahead and done it

and that it was not the first time that they had ignored the wishes of this House. He is in fact wrong it is not the first time and I have no doubt it will be the last. I am not sure whether the 1987 Airport Agreement was a first time there might have been another one before that but I can tell the House that those of us who were here in 1987 saw a situation in which in some respects was even worse than what they have just done now because in 1987 this House jointly called the demonstration, jointly led the demonstration with no involvement from anybody else in the sense that the banner was the slogan carried by the Members of the House saying "*No Airport Deal",* it was being done coincidental with the visit to Gibraltar of Mr David Ratford who had been sent to find out our wishes and we told him what our wishes were and our wishes happened to coincide with the view expressed by Sir Geoffrey Howe in Luxembourg on the 7th July and we were expressing our wishes in August so here we have a situation when the British Government were saying, "*...it is scandalous that the Spanish should want the deal which is in effect a negation of the rights of the Gibraltarians as citizens of the European Union and there is no way we are going to be blackmailed by Spain,"* we come out with our usual flag waving enthusiasm supporting the line that Geoffrey Howe had already publicly defended. We do it in response to an initiative of the United Kingdom saying "*we want to know what you think*." We are sending somebody out on a fact finding mission to sound out local opinion and then they probably do the very opposite of everything we have told them to do and everything they themselves have intended to do, so I think not only was the response of the British Government to the March demonstration not the first time but in fact they have done it even on worst terms because on this one they did not want us to have the march and they did not want us to tell them but on the other one they actually invited us to tell them and then because we did not tell them what they wanted to hear they promptly ignored it. That is the way colonial powers behave so we have to accept that this is what colonialism is about. Colonialism is that the Colonial power will consult the colonial people when it suits the colonial power and provided that the result of consulting the colonial people is that what happens is what the colonial power does but they are able to blame the colonial people for it if it goes wrong. If that dynamic is not present then the consultation is not worth having. What Jack Straw said in the House of Commons was indeed a gratuitous give away of the British Government's negotiating position but I think that it is worth remembering it with what he prefaced it with and he said and he is right in what he said that for the case successive British Governments have tried to persuade the Spanish Government to go about it in a different way and the position of successive British Governments not just since Brussels but indeed going further back since the start of the thinking together of Sir Douglas Alex Home and I think it was Lopez Bravo or Lopez Godoy on the Spanish side when they started thinking together and working together and they almost went to bed together as I recall the slogans we used at the time that was a scenario in 1971 before the Strasbourg talks, in which the British Government's position was to say to the Spanish Government, "*In principle"* they were not saying it in public but it was self-evident and in fact the papers that are coming public now are already showing what was happening and are already showing that the British Government as far back as 1971 was dangling the shared control of the airport even in 1971 three years or four years after our last referendum they were already dangling the carrot of sharing the airport and Sir John Russell who was the British Ambassador in Spain was given the green light as the confidential papers that have now become public show by the Foreign Office to make this offer but to add that it was his own initiative and take the blame for it if it became public, and it became public because it got leaked and it was published by the Times and it was finally because the Spaniards insisted that the deal would involve and there were supposedly positive things for the Gibraltarians in the package. There was the restoration of the frontier opening in 1971 and the direct communications of flights, that was available in 1971 so things were being offered by the Spanish in exchange for a deal which was an initiative of the British side to share the airport in 1971 and it fell because they insisted that there had to be the Spanish flag flying at the airport and the Foreign Office said that the British Foreign Secretary would not get it past the House of Commons. So, what is new is that it is in the open and that it is being admitted and although that

is a dangerous thing for Gibraltar because those concessions that are now being spelled out in the House of Commons are the starting point of any other formal negotiations that may follow at least if the illness is out in the open it is easier to prescribe the medicine and if the illness is hidden as it has been many years in the past we have been divided in Gibraltar between those of us who have been advocating that the British Government was up to no good acting behind our backs and against our best interests and others who said we must have trust in the British Government because they are our only and best friends. Well the conduct of the British Government has not been the conduct of a best friend. It has been the conduct of a colonial power and not just to us. The Chief Minister said, "*Would the British Government do it with the United States over Bermuda,"* the answer is no there is no prospect whatsoever of the United Kingdom doing this to Bermuda with the United States. He is correct but is not correct in thinking that there is something special about Bermuda that prevents it the only thing that prevents it is that the US does not want Bermuda. If the United States had a claim on Bermuda the Bermudans would be in as much trouble as we are. I have absolutely no doubt about that because the proof of the pudding is that the Falkland Islanders had been in the same situation or even worse because of the Argentinian claim and one has to assume that the United States has more clout than Argentina in bending the United Kingdom's arm and in 1968 as has now been revealed a year after our Referendum and when the United Nations was being told by the United Kingdom that the sovereignty of Gibraltar and the sovereignty of the Falkland Islands were not negotiable and that the question of sovereignty was not a matter of decolonisation and not within the competence of the Committee of 24 when that was happening there was a secret memorandum of understanding which is now a public document in which the British Government recognised the Argentinian sovereignty over the Falkland Islands. If they are prepared to do it to the Falklands they would do it to Bermuda, the Cayman Islands and anybody else in which there was a conflict of interests between the interests of the colony and the interests of the colonial power. That is what colonialism is about and we are a colonial people and because we are a colonial people we are entitled to self-determination and this motion is a denial of our self-determination and we must accept that it is a denial because we have to stand up to the colonial power. It is no good saying we want to have our self-determination recognised and then we run with the tail between our legs everytime there is an issue of having to stand up for those rights because we are afraid of upsetting the UK Government and that has been one of the problems that our people have faced over the years. We have to be united but we have to be united in having the guts to stand up for those rights.

As far as we are concerned this is a very important Referendum, perhaps more important than the 1967 one because at the end of the day the 1967 one which was rejected by the United Nations was called by an order in council by the colonial power and this one is being called by the colony's parliament. The motion and the previous motion that we sent to the United Kingdom and this one keeps on referring to the United Kingdom not entering into any agreement on sovereignty with the Spanish Government against our wishes. For me it is clear that that means that before they can negotiate any deal to settle Spain's sovereignty claim they have to obtain our approval and therefore as far as we are concerned the Referendum which says, "*....do you approve the sharing of sovereignty with Spain, Yes or No?"* If the answer is 'No' as we expect it to be then it closes the door for evermore until a subsequent Referendum reopens it to any sovereignty negotiations with Spain because if there is a Spanish claim on sovereignty a Spanish claim on sovereignty can only result in either Spain obtaining some share of the sovereignty short of 100 per cent whether it is 99 per cent or one per cent or Spain's sovereignty claim being rejected, period. If one is rejecting the sovereignty claim out of hand as we believe it has to be because Spain does not accept our right to self-determination and therefore one is the antithesis of the other and Spain tells us every year at the United Nations that the negotiating process is based on the principle of territorial integrity. Indeed in her first speech to the General Assembly last month Ana de Palacio has reminded the General Assembly that any interference with the

Brussels negotiating process would be in conflict with the principle of territorial integrity upon which those negotiations were based and the other negotiating party has not said this is not true, the negotiations are not based on that. The Chief Minister's interpretation of that phrase was that she was referring to the Referendum we are calling today and that the Referendum we are calling today in fact is seen by Ana de Palacio as an attempt by us to interfere with the Brussels negotiating process not with the Jack Straw statement, "*...with the negotiating process,"* those were her words which she claims is a negotiating process based on the concept of territorial integrity with the approval and endorsement of the United Nations. There is no doubt that the disastrous Brussels Process does have the endorsement of the United Nations I wish it was possible to argue otherwise but it is absolutely crystal clear from the 1985 consensus Resolution of the Committee of 24 that welcomed it and from the one that has just passed which urges both sides to carry on with it after the 12th July statement in the knowledge that the 12th July statement has clearly without a doubt defined the process in the terms which are consistent with the Spanish argument all the time, Spain has been telling the people of Gibraltar from day one from the day the motion was brought to this House of Assembly , Spain was telling the people of Gibraltar "*.....however much we may dislike the idea we have to accept that Spain has been more honest with the Gibraltarians than the Foreign Office has been,"* and Spain has said from day one, *" I am opening the gates for one reason and one reason only and that is in exchange for the British Government sitting down with me to discuss my claim to the sovereignty of Gibraltar,"* That is the reason and without (b) there is no (a). This was not a gesture of goodwill, this is not an attempt to woo the Gibraltarian this was not something that the United Kingdom insisted Spain had to do in order to enter the European Union, no, this was something that could have been done at any time since the day the frontier closed, at anytime, because it was saying yes, to what had been a no and it was the no that closed the gates and it was the yes that opened it. When the United Nations told Spain and the UK sit down and resolve your differences and settle Gibraltar's future and we rejected the Castiella proposals in our last Referendum the British Government took the view that there could only be informal talks but there could be no commitment to discuss sovereignty and Franco closed the gates and then 16 years later the United Kingdom agreed to discuss sovereignty and a democratic Spain opened the gates. Franco was prepared to do that if we had been prepared to say the same thing to him as we said in the Brussels Agreement. So, where does that leave Gibraltar now? Well, it leaves Gibraltar now with a statement of policy by the British Government that says, "*..the British Government believe that the only way forward,"* not even the best way forward, "*...the only way forward in which they can enjoy a secure and prosperous future is for us to settle the Spanish sovereignty claim because there is no other way in which we can deliver to the people of Gibraltar a friendly Spain."* I believe Jack Straw is saying the truth in that he cannot deliver a friendly Spain any other way and he cannot deliver it because the only other way would have been to stand up to Spain from day one and having capitulated to Spain for 30 years it is too late for the British Government now to do what it should have done a very long time ago. If they had stood up to Spain on day one then we would not be in the mess we are today and if this House had stood up for Gibraltar's interest from the beginning which regrettably it has not done in the past because the House Of Assembly was given the opportunity of rejecting the Brussels Agreement in 1984. The one thing we can say is that unlike what we are saying about the present British Government we cannot say about the Conservative Government in 1984 that they imposed the negotiating process on Gibraltar, they did not. The Lisbon Agreement was imposed on Gibraltar because the Lisbon Agreement was announced when it was reached between UK and Spain and I remember that Sir Joshua Hassan and Peter Isola appeared like two ghosts on television in a state of shell-shock because they were hearing it for the first time on the news and they rushed off to London and they came back to reassure the people of Gibraltar that they had been in turn reassured by the Foreign Secretary that we had nothing to fear. That was in 1980, fortunately for us nothing happened then but when they came back in 1984 they improved on what they had done in 1980 because the 1984 agreement said it was the putting into effect of

the Lisbon terms but of course expanding them to make it absolutely clear that the issues of sovereignty in the plural were going to be discussed something which we had never accepted in this House before then and when this was brought to the House the position of the Government of Gibraltar was that it entered a reservation on the question of sovereignty and that in any case the Brussels Agreement excluded the Gibraltarian presence as part of the United Kingdom delegation from the part of the negotiations that dealt with sovereignty. The negotiating process were going to be split in two and sovereignty was a matter which was for the United Kingdom and Spain alone and we voted against, walked out of this House, collected signatures and asked for a Referendum then, at the beginning in 1984. Today fortunately the House is united in calling a Referendum but we have never had any doubt that what was being agreed then was a route that could only end in one place the place where we are today which is a place in which Spain told us from day one they never said anything different they said this is what this is about and the British Government are now telling us that trying to persuade Spain to win the hearts and minds of the Gibraltarians is an exercise that has been tried for 30 years has failed, the Spaniards do not believe that they can win our hearts and minds and therefore they are not willing to make the attempt. I think that they are right. I think that if the Spaniards showered benefits on the Gibraltarians we would pocket the benefits and then salute them in the traditional way that one uses when one does not want to go along with somebody. So, the Spaniards know us well enough I think to suspect that that is the result that it would produce so they are not going to try and in any case why should they? Why should they try and win us over when at the end of the day as far as they are concerned they do not need our okay? They do not particularly want to recognise that they need our okay because even that for them is the thin edge of the wedge which would enable us to build a case saying Spain is recognising our right to self-determination so as far as Spain is concerned although it would be as Señor Moran used to say, *"..not a good business for Spain to have the British hand Gibraltar over against the wishes of its people on a plate, no Spanish Foreign Secretary should say no if it happened, although it would not be a good business for Spain."* And Fernando Moran was the first Spanish Foreign Secretary of Spain that recognised the desirability of winning Gibraltarian consent but that was it however desirable the Spanish position is that unless somebody can guarantee that the concern is going to be forthcoming they are not lifting a finger. Where are we going to be left then after the Referendum? And clearly the House in this motion is asking everybody to vote in the Referendum my own preference would have been to say to everybody to vote 'No' in the Referendum but I accept that all these electoral observers would want the House not to make a recommendation although I think that given that the House itself has rejected the position indeed it seems to be not just as political parties but as a House of Assembly we are perfectly entitled to say to the people *"we recommend to you that you vote as we intend to vote which is as we have already voted in the Resolution that we passed in this House in March"* and therefore the people of Gibraltar are being asked effectively to choose between two options even though there is only one question on the voting paper. We proposed originally that there should be two options but we accepted the Government's view and we are supporting that it should be one option but I think implicitly they are voting for two options because the one option is to say 'yes' to Jack Straw and the other option is to say 'yes' to the House of Assembly and if one says no to Jack Straw then one is taking the same position as the House took before Jack Straw made the statement and the motion was intended to pre-empt and prevent that statement being made and it is clear that the British Government decided to disregard the view of the elected representatives of the people and therefore they are likely to disregard the views of the people that reflect the same sentiment and indeed the Foreign Secretary has already said that he does not see the need for the Referendum because he already knows the result so it is quite obvious that the result is not going to change his mind because he knows it the same as we all do or we all expect it to be which is that there will be an overwhelming rejection of the British position on the sharing of our sovereignty with Spain.

The position therefore is that there may or there may not be a joint declaration and if there is no joint declaration it will either be because of the red lines or because they have decided to shift it

into the future but certainly neither the British nor the Spanish government are going to admit publicly that they are not going to make a joint declaration because of the result of the Referendum. Obviously the result of the Referendum creates a problem for the British Government and we are of the view that the sooner we create that problem the better and the earlier down the route we stop them or try to stop them the better but we accept that it is a matter of judgement and in the judgement of the Government they had to wait until the Straw statement was made before they went down the Referendum route and we are supporting the Referendum on the basis of the timing that has been decided by the Government but, Mr Speaker, the British Government's position after the Referendum is bound to be that if they are able to reach an agreement with the Spanish Government, if they resolve the red lines issue then that agreement will stay there on the shelf unless we decide that we want to get involved in making it more sellable and making it more palatable to Gibraltarians in order to put it to them in a Referendum. That is the formulation that was made by Jack Straw when he explained what the joint declaration would be. The joint declaration he said would be a statement of intent by the two Governments, a policy statement saying, *"..we (the British and Spanish government) believe the way ahead for the Gibraltarians is this."* The British Government will argue that in order to do that they do not need our consent in order to state what their policy is on Gibraltar they do not need our consent and that that is the policy that is consistent, as I have said on innumerable occasions to the Conservatives, consistent with what Sir Geoffrey Howe and Margaret Thatcher agreed in 1984. Whether we agree or whether we do not agree that is the position with the British Government I do not think that there is any question about it. As far as they are concerned what is happening today is consistent with what was agreed in 1984 it certainly consisted with discussing sovereignty which is in the text of the Brussels Agreement and it certainly consisted with the Moran proposals of 1985 which Moran made clear was coincidental with the opening of the frontier because it was the negotiations of those proposals that was making it possible for Spain to lift the restrictions or partially lift them.

We believe and have said when we called for a Referendum last November that the people of Gibraltar should be left under no illusions as to what this step means. In our judgement this step means that we are effectively doing what is right as a colonial people in defending our exclusive right to decide Gibraltar's future in which nobody else has any right except us and doing it in the knowledge that this is in conflict and in contradiction with what the United Kingdom and Spain have agreed is the way ahead. That what the United Kingdom and Spain have agreed as a way ahead enjoys the support of the United Nations and has done since 1985 and continues to do every year, it has just been reaffirmed and will be reaffirmed by the General Assembly in December and that what Spain and the UK want to do enjoys the support of the rest of the European Union. In the knowledge of all those things we must stand up and say 'No'. In the knowledge that with it may well come an even unfriendlier Spain but at the very least a Spain as unfriendly as it is today and an even more pathetic UK if that is possible in terms of the defence of our interests. In the knowledge of that we must still say no so I do not believe that we have got to urge our people to say 'No' to the Jack Straw position by painting a rosy path ahead but by saying to the Gibraltarians, *"you must stand up and be counted,"* and anybody frankly that votes in support of the deal with Spain in the judgement of the Opposition is not worthy of calling himself a Gibraltarian because in fact the route that is taking Gibraltar down is a disaster for Gibraltar and anybody that does that is either blind to the consequences or does not care. Therefore when we come to the United Kingdom citizens of 10 years of being able to vote in the Referendum our only concern has been that this Referendum is about self-determination, are we saying then that in the decolonisation of Gibraltar and in the exercise of our right to self-determination which is what we are claiming to have in this Referendum, we are claiming that our right to self-determination extends not just to the implementation of any decision to decolonise Gibraltar but even to the adoption of any policy by the British Government which in our judgement conflicts, contradicts, or undermines that right to self-determination. I believe that that is in fact what the United Nations Charter says. The United

Nations Charter says colonial powers should not behave in the way the British Government are behaving, they should not go round battering the rights and the future of colonial peoples in order to settle their bilateral relationships and improve them with third parties but if the United Kingdom citizens that have been residing in Gibraltar for 10 years and consider Gibraltar to be their home should be included in the decision as to Gibraltar's future because it is not just a question of Gibraltar being or not being British, it is the question of us having the decision to decide Gibraltar's future or not, the right to self-determination, then I believe the Gibraltar Status Ordinance must make it possible for those who can vote in a Referendum to acquire the status of being Gibraltarians and that way we square the circle. Then we can say the Gibraltarians are deciding Gibraltar's future even though the Gibraltarians may be those who vote in the Referendum to decide whether sovereignty should be shared or not shared. I am sure that UK citizens that feel that Gibraltar is their home would welcome the opportunity to be able to say they are British Citizens and Gibraltarians particularly now that under the nationality act it is open to anybody in Gibraltar to acquire and in all the other colonies to acquire automatically United Kingdom citizenship and therefore there is no real distinction in terms of nationality but in terms of what we believe we will need to do eventually and what we believe we will achieve eventually irrespective of how high the odds appear to be against us which is a self-determination referendum to decolonise Gibraltar we believe that will happen we believe we will achieve it and we believe we must work on that Referendum as soon as we get this one out of the way so that we get to the stage where the people of Gibraltar then say this is the way I want to be decolonised. When that happens then we think all those who voted in this Referendum would expect to be included in that other one and therefore their position as Gibraltarians should be put right between now and then.

Mr Speaker, as I said in my opening address some of the elements in the analysis of the Government do not coincide with our own analysis of this situation but we are very happy to put it on the record in Hansard so that it shows to where we believe the analysis should lead us to and where the Government have explained their analysis situation to put that on one side and say, *"After today what we have to do is work together to ensure a massive rejection of the British Government's position on the 7th November."*

Mr Speaker, just one final point that I want to make which is that the Regulations, the Administrative Rules that are being adopted by the House today provide that the claims and amendments to the draft final list should be in no later than seven days before the Referendum. There was in our view a conflict between the five days and the seven days and this is being corrected today by having seven days put in terms of the time limit but it is seven days within a period of time to be decided and announced by the Referendum Administrator. The Referendum Administrator in his wisdom has decided to close the time limit for inclusions or objections at 7.00 pm on Saturday 19th October 2002 and since it is open to him by the will of the House contained in these rules to wait until seven days before the Referendum, yes it is, it says here in Claims and Amendments, "*....Any notice under subrule 1 delivered to the Registration Officer within a period of time to be decided and announced by the Administrator at the times he publishes the final voters list being a period of not less than five which is now seven days prior to Referendum day shall be disregarded,"* Therefore it cannot be later than seven days unless the Referendum Administrator has chosen an earlier date. So, if the House is giving the Referendum Administrator the opportunity of saying I will not entertain any changes to the list after the 1st November then why has he chosen the 19th October?

We have attached a great deal of importance to people being removed from the list not just being added and the reason why we have done that is because it is possible that there could be many hundreds of people on that list who should not be on the list according to the criteria for inclusion that have been published and who would not vote but if those people do not vote then it would be impossible for others to argue that there has been a

much higher abstention rate than the last time and that the much higher abstention rate reflects the 'yes' votes who did not want to be seen or did not want to go or were intimidated or whatever. Irrespective of the panel of notable observers that we have who will be able to say without a doubt that the Referendum will have been conducted in accordance with the highest standards required in any democratic Referendum anywhere in the world, of that we have no doubt. The British Government are not questioning whether we do the thing properly, the British Government are questioning whether we do it at all so that will cut no ice with them but certainly it would prevent Ana De Palacio repeating the position that Señor Castiella took in 1967 of saying that we are all being marched into the polling booths with the Royal Navy pointing the guns at us from the Bay they will not be able to claim that on this occasion.

There appears on the basis of the analysis that we have carried out so far to be several thousand people who were included in the Register of the last elections in the year 2000 who are absent from the Referendum Register and several thousand people who appear in the Referendum Register who are absent from the 2000 register therefore the discrepancy between the two that is the people who have disappeared and the people who have appeared is very substantial and there is only a week to sort this out and we do not think it should be a week we think it should be longer. Let me say that this is not a reflection on the very hard work that has been put in by a lot of people in a very short time to try and produce this, we know that. We know that the civil servants engaged in this exercise have been working round the clock against a very tight deadline, frankly it could have been started earlier, there was no reason why the preparation for the register could not have started before a decision was taken as to whether to go ahead with the Referendum or not because it could have been ready but it did not happen so it is no good crying over spilt milk. The point is that this is where we are today and that therefore given that the Regulations that the House is voting allows a later date than the 19th October 2002 we think that it should be a later date than the 19th October maybe an additional week and we feel that welcome as it is that we have now included a provision for objections and a form for objections we ought to include in the advertisements where people are being told that they can go there to say they have to be included or to amend the details of their inclusion that they can also go there to say so and so should be excluded. There was no provision for it when the first drafts list came out. There is a provision in the final draft list but the advertisement reminding people that they should go and look at the final draft list tells them to go and check if details of their entries are correct it does not invite the public to bring to the notice of the public servants there the inclusion of people who should not be there even though we are now making such a provision under regulation 9 and we are now including a form to do so and therefore we believe that the Referendum Administrator should bring this to the notice of the public it is no good having it in the rules if we have not told them in the adverts.

Mr Speaker, this is all I have to say on this and also say that it is very welcome and that we are in fact delighted to welcome the announcement by the Government that the Referendum is being held on the 7th November and we have no problem in saying so and if the House of Assembly or the Legislative Council in 1967 welcomed the announcement by the British Government we should welcome even more the announcement by the Government of Gibraltar and the opportunity that this House has to jointly call the Referendum and we shall certainly be voting in favour.

HON CHIEF MINISTER:

Mr Speaker, if I could take some of the points that the hon Member has made in reverse order so dealing first with the last one that he has made. The hon Member knows from a conversation that he has had with the Chief Secretary whom I asked should speak to him to put his mind at rest that it is not true that several thousand people who should not be there are

there and several thousand people who should be there are not. It is not true. He keeps on asserting it, the administrative staff involved in this exercise at highest level keep on assuring him that it is not true and he continues to assert it notwithstanding therefore the hon Member has got to understand that I am not going to destroy the consensus between us on the basis of his assertions but on the other hand he has chosen to make the assertions and therefore I must be as free to make the counter assertion as he was to make the assertion in the first place. It is not true the hon Member will see when the results are published of the number of amendments that have been made to the Register at least in so far as excluded people are concerned that it is not sustainable.

Mr Speaker, it is not true that there is only a week to sort this out. Of course it is not true he must have been reading the Chronicle and the other local newspapers and watching television he must be sick and tired, the organising committee published a list from a number of sources bearing in mind that the Register of Gibraltarians was very out of date and various other administrative problems that existed they published a list which was no more than a first draft and people have had more than two weeks the first time round to make representations about themselves being missing. I accept what the hon Member says that they were not encouraged to object about other people's inclusion. In terms of the several thousands which he claims are missing *[Interruption]* but there cannot be several thousands missing from the second draft because people have had two or three weeks from the first draft to make representations about their exclusion so if there are several thousand people missing from the second draft, which there are not, but if there were it is only people who have chosen to ignore daily advertisements during the last three weeks inviting them to examine the drafts. The Government have gone to the trouble to put this on the website it incidentally has been very successful most people have checked on the website by the number of hits that we have had, so if there is still somebody missing from the second draft it is someone who has chosen to ignore the last three weeks of opportunity so it is not one week to sort this out. It is one week, it is a further week, after publication of the second draft which takes already into account the second draft all the modifications made to the first draft following the representations that people made during the first three weeks of window opportunity. So for the hon Member to say that we have to sort all this out in one week is an administratively absurd remark. What he may mean is this, and he would be more justified in making this point than the one he has made, that as the Government have not encouraged people to come forward to object to other people's inclusion and that the Regulations which provide an objection form have only been given publicity in effect today as a result of this motion, that we only have one week to exclude people who should not be there in the first place but there are not thousands even of those because the Referendum Administration Committee has gone to quite a lot of trouble although it understands it has not succeeded in weeding them all out, there will be people there just as there are in general elections. The Referendum Administration Committee has already had a good crack at eliminating from the list people who should not be there. So what we have got one week left to do and this is the best case that he could possibly state which is actually more than one week is to weed out the remaining people who are on the list who should not be there and who are not thousands either. No, I guarantee him it is not thousands either and even if that were the size of the task one week left that is the amount of time that there was in the 1967 Referendum. One week to object for all purposes not three weeks for draft one and another week plus for draft two. In the 1967 Referendum there was one week for the lot, no website, no internet, no television announcements, just one week. Even if there is only one week it is still a perfectly proper period of time in which to do it. The hon Member has been free to given that these Administrative Instruments do not have the force of law the lists have been published I think I am right in saying that the Referendum Administrator has had one or two cases of people pointing out other people's names but no one, the hon Members were free, are free still are free from the day that the first draft was published and say to the Referendum Administrator what is so and so doing on the list he does not live in Gibraltar? That exercise is as free

[Interruption] It has nothing to do with you? Well if it has nothing to do with you…*[Interruption]* the hon Members appear to show a concern that no one else is expressing and that concern, obviously we would all be concerned that non-entitled people stay on the final list but the concern that the hon Member has which no one else appears to share is that there are thousands of these people. The hon Members have had three weeks to have provided examples of this to the Referendum Administrator who is creating the list and does not need the Regulations to decide whether somebody complies or does not comply with the eligibility criteria. No such representations have been made although the hon Member has expressed the concern that there are thousands but he has not said, *"and here is our view of some of the people who we think are listed,"* but he still has a week to do that if that is what he particularly wants to do and I would share with him the concern that only eligible people should be on the list. After all it was the Government who chose the eligibility criteria why would we choose the eligibility criteria and then be content for people who are not within those eligibility criteria to remain. That is just the worst of both worlds. We have upset some of the people the ones who are not willing to play jiggery-pokery with the eligibility criteria and so we are not at the beginning of a one week process we are three or four weeks down the line of a very intense professionally carried out to which the Government have spared no resources in terms of public advertising to ensure that people get not just the maximum opportunity but that in fact the possibilities have been flogged of people having a chance to make sure that they are on the list with the right name and address and frankly for the hon Member to rubbish those efforts by suggesting that there is only one week left to do the job and it is a pity that the Referendum has been called so late is frankly disingenuous in the circumstances both of the time scale and of the effort that has gone into it. Certainly as far as the Government are concerned we entirely reject those calls because to the extent that he thinks that there are thousands of people on this list that are not he has made no attempt himself to bring them to the Administrator's attention.

The hon Member expressed a concern which we share about non eligible people being on the list which would show a higher percentage of abstentions. I agree that people who are not eligible should not be on the list because they are not entitled to be on the list but I am not sure that his mathematical concerns are justified. He fails to draw a distinction between abstention and turn-out. In a Referendum as in a general election but certainly in a Referendum, and that is in the Electoral Reforms Society's Guidelines on Referendum, the percentage vote for or against one proposition is as a percentage of the votes cast not as the percentage of the people who would have been entitled to vote and therefore the relevant denominator is not the turn-out, it is not the number of people on the register who could have gone along to a voting station if they had chosen to but rather the relevant denominator is the people who did go to the voting station and cast a vote and an abstention is not a member of the public on the Register of Voters who chooses not to vote but someone who goes to vote and casts a vote in blank. If we take a vote in this House and the hon Member is not present in the House to cast a vote he is not abstaining. Abstention requires a vote which is for neither proposition in question, that is an abstention, and therefore in accordance with the Electoral Reform Society Guidelines the result of the Referendum will be such and such per cent for 'No' out of the total votes cast not out of the list of the Register of Voters and that is as it is done everywhere both in referenda and in general elections.

The hon Member I am afraid is still mistaken. He did have when we spoke on the telephone a point as to 9 (2) of the rules and that has been corrected by making 7 also in 10 (4). There was an inconsistency between 9 (2) and 7 (4) which we have recognised and corrected but the anomaly which he continues to assert exists in 9 (2) does not exist. As I have understood him he has said that 9 (2) continues to be in conflict because *[Interruption]* fine, if he accepts that 9 (2) amended as it is now amended does not mean that the Referendum Administrator was not at liberty to publish the second draft on Friday and say closing date Saturday fine. What he was saying was that he could have left it open for

longer so why does he not? That is a different point but there is no inconsistency in the rules and of course it is a matter entirely for the Referendum Administrator as to whether he gives an extension of that period *[HON J J BOSSANO:Not for the Government]* if I say it is exclusively a matter for the Referendum Administrator it hardly seems necessary for the hon Member to say "*and not for the Government*" because exclusively to the Referendum Administrator I would have thought meant that. The Referendum Administrator has other concerns on his mind not least the need to print all these things and to make the necessary administrative arrangements. So, the hon Member said that the Register of Gibraltarians Status Ordinance might now be amended to reflect the 10 year position. That is certainly a possibility but I am glad that he is now articulating that point in the correct fashion and not in the fashion that he was previously articulating suggesting to people that the Government somehow has a discretion which is what he and a spokesman for his party appearing on television programmes have been giving the impression that somehow under the Gibraltarian Status Ordinance there is some sort of discretion to the Governor, I think it is now the Chief Minister it used to be the Governor, a discretion to allow registration under the Gibraltarian Status Ordinance for people who have been residents for less than 25 years. The Opposition Members should read the Ordinance more carefully than that but certainly there is not such a discretion but that is a different point. There is no discretion to make a British subject who has been in Gibraltar for less than 25 years anybody who is entitled is entitled and the discretion is only bestowed in respect of people who have been here for at least 25 years that is the position. A very different thing is that with legislative time available we might in the future amend the Gibraltarian Status Ordinance to reduce that figure from 25 to 10 which is a much more sensible point that the hon Member makes this morning but to suggest that the Government could have made everybody in Gibraltar a registered Gibraltarian between the date that the Referendum was called and voting day is completely wrong and surely is certainly wrong on the mouths of the party who feel that it should be only Gibraltarians that vote. Why should they be against enfranchising British non-Gibraltarians to vote in a Referendum but be willing to make them registered Gibraltarians it is the same result by different means the fact is that they vote.

Mr Speaker, a point that the hon Member made about what this Referendum means and what it does not mean and I particularly want to say things that will operate on the minds of people who may wish to misinterpret this Referendum and find themselves voting 'Yes' under a misillusion about what this Referendum is about. One of the points at issue generally in the political process that has taken place during the last 12 years is that even those people in Gibraltar and we know that they exist who want to negotiate a settlement with Spain are not being given the possibility of doing so, even they should be against this process because Gibraltar is not being invited to participate in this dialogue initiative that is taking place and has been taking place since last summer as a negotiating party to say 'Yes' when it agrees and 'No' when it does not in a way that will prevent that to which it says 'No' from happening and Señor Piqué said this clearly as Spanish diplomacy so frequently does more than others he said, "*..look Señor Caruana has got to understand that he is not being invited to decide the design of the house he is only being invited to come along later to express an opinion, an opinion not even to decide the colour of the wallpaper, to express an opinion on the colour of the wallpaper.*" So, in respect of the design of the house which is the phase one declaration of principles not even an opinion that is Anglo-Spanish and even in respect of the detail, the local input, even then it is to express an opinion, well who goes along to a negotiation on those terms. One goes along to a negotiation when one can say 'yes' to this and 'no' to that or 'yes' to everything and 'no' to everything and the position that one takes determines the course of what happens. So even for the people who favour a negotiated settlement this is not the process in which even their views can prosper.

Another reason why in my view people should vote 'No'. People should vote 'No' who do not approve of joint sovereignty between

the United Kingdom and Spain for reasons to do with Spain. People who do not approve of joint sovereignty between Britain and anybody because they consider as I do that the concept of joint sovereignty is a political and legalistic and dangerous nonsense for Gibraltar and its future. People who whatever their position is on dialogue, on negotiated settlements, on doing deals even they and I know some of them and I know that this is their view even they want dignity and safety in the negotiating process because even for people who want a negotiated settlement there must be a difference between Gibraltar being at the negotiating table in dignified and safe conditions and things which are foisted bilaterally on Gibraltar by people agreeing the principles applicable to their future over their heads. So even they should vote against this for that reason if for no other. Then there are many people who want a settlement with Spain but who do not think that joint sovereignty is it . There are lots of reasons why people may wish to vote no in this Referendum without it being misinterpreted as a Referendum on 'Do you want dialogue with Spain or do you not?' This Referendum is not about dialogue with Spain. This Referendum is not even about whether one wants a settlement with Spain, it is about whether one approves or disapproves of the principle of joint sovereignty between our colonial power and our neighbour and it is also, even for those people who may in principle agree with joint sovereignty, it is also about the way it has been brought about and the dignity and safety for Gibraltar in that process. That is what is at stake in this Referendum, that is what people should have no illusions taking the steps of voting in this Referendum means and to vote 'Yes' in this Referendum at best places Gibraltar in the following position and that is that our political rights will have in effect been defined by the United Kingdom as being no wider than the right to say 'No' to physical implementation of their agreement struck over our heads and that leaves no space in principle for any existence of a right to self-determination on the people of Gibraltar. So it is either that or that the United Kingdom and Spain fail to reach an agreement and the statements that have been made remain made to almost the same political prejudice as if the declaration had been made because these red line issues are entirely irrelevant in fact there is a couple of them at least one of them in which I think Spain has a point. If the United Kingdom really feels that the sovereignty of Gibraltar is as transactable as it appears to think it is I really do not see where the logic lies for taking a different view of the naval base over the rest of Gibraltar but all the red line issues are irrelevant to us and they do not address the reasons for our fundamental objections to the principal and people in Gibraltar must not be allowed to be drawn into the sense that somehow in these red line issues lies the protection of the things that are important to Gibraltarians they are irrelevant on that question and even if they resolve the three red line issues the assault on our political rights as a people remains intact.

Mr Speaker, the hon Member expressed a view about the timing of the Referendum, he knows that we have different views and judgements about that if the Government had done all and everything that we were asked to do by him and others at the time that we were being asked to do it Gibraltar's powder would have been fired very early on this process, we would not have been able to build the momentum, we would not have been able to build the incremental political pressure that we think Gibraltar has successfully built over the last seven or eight months and it has only been possible to do it because we have paced and gradually escalated the principles involved here. Certainly I recognise that the hon Members were asking in November for a different Referendum they would still prefer to have a different Referendum but in our view just for the question of the timing of the Referendum I think that it would have been a tactical mistake, these are matters of judgement obviously I defend my own judgement the hon Member must defend his, I think it would have been a tactical error of judgement for the Government to have called a Referendum before the Straw declaration because before the Straw declaration there was nothing agreed and nothing declared and Gibraltar would have been open to the proposition to which we are still being exposed even after the July statement of Straw that the Referendum is premature. So the Referendum could not tactically have taken place in the best interests of Gibraltar until there was some firm expression of policy position or agreement which the people of Gibraltar could say " I object to

that and you have already agreed to it." Mr Straw on the 12th July said that Britain was agreeable to sharing sovereignty with Spain. That was something that the people of Gibraltar can disqualify after the event by placing in a referendum. This Referendum is not about trying to disqualify it before the event because as Mr Straw himself admits, he already knew the wishes of the people of Gibraltar before he made the 12th July declaration. So knowing or not knowing the views of the people of Gibraltar before the 12th July declaration was not germane to whether he made it or not. The purpose of the declaration is that it should stand on the record as the people of Gibraltar's response and that that should be the last word otherwise we would have left with a Referendum ignored and a political declaration after the Referendum result and that in our view was not the best tactical option for Gibraltar and the reason why Mr Straw, just to mention another of the points raised by the Leader of the Opposition, as to why he does not care about the results of the Referendum goes to the very root of what some hon Members would have heard me usually after dinner speeches describe as 'The Cunning Plan', the whole pre-agreed choreography of this, proved, despite Mr Straw's attempt to deny it on the Today Programme when we appeared together a few months ago proved by the Spanish press reaction and the Spanish Government's reaction to that Today Programme statement and the point is this distinction that the British Government make between respecting our wishes on implementation questions on the one hand and on political agreements of principles question. The whole essence of Baldrick's cunning plan was the agreement between them in July of last year that we would use the phrase '*the people of Gibraltar would have the last word, they must not worry on implementation, nothing will be implemented*,' without explaining that the word '*implemented*' was the key word in that sentence. In other words, nothing will be put into practice without the people of Gibraltar's agreement but we will agree it politically as the applicable principles whether they like it or not and when Mr Straw says that he knows what the views of the people of Gibraltar are and that it will not stop him, what he means is it will not stop him signing the declaration of principles because that is what he had agreed with Spain to do. Indeed that was the novelty of this whole procedure as the Spanish press said repeatedly after Mr Straw and I featured on the same edition of the Today Programme on BBC Radio 4 when he said in answer to a question, " *…..Well Mr Straw are you saying that if the people of Gibraltar reject this in a Referendum everything will be off the table?"* and for the first time at that point Mr Straw finds himself with an audience of 2 or 3 million of his own electorate with a choice of either admitting or denying that the Referendum result, the British Government's eventual Referendum result, would be binding on the British Government. If he said, "*…no, no, no there are still things that stay on the table after the Referendum,"* namely agreement of principles he knows he would have had a hammering at home and if he had said " *…no, no everything is off the table,"* he was going to upset the Spaniards which he did, the reaction was, "*…this is a u-turn this is not what we agreed."* The whole novelty of this process is precisely the fact that we have agreed that the political agreement between the United Kingdom and Spain will remain extant on the table valid as between the United Kingdom and Spain even if it cannot be physically implemented because of the Gibraltar Referendum the result of which Madrid said we had taken for granted already. So the whole essence of this choreographed pre-determined methodology which I call the 'The Cunning Plan' was to deliver a declaration of principles which would not be implemented unless we approved it in a Referendum which would be several years later and that even if when we rejected it in that Referendum several years later it would still remain as the agreed Anglo-Spanish position in other words it would survive the Referendum. That was the plan and that is what Mr Straw says when he calls this an eccentric waste of money because we already know the result. We already know the result to the extent to which the result is relevant and the result is only relevant for physical implementation, in so far as the British Government are concerned it is not relevant to the question of whether they sign away the principles applicable to our future in a political document of agreed political principles.

As to where we go from here I have already indicated to the hon Member in our private consultation on this general question that

the Gibraltar Government expect to progress the Constitutional Reform proposals which represent the policy of the Government taken to fruition in a consensus resolution of this House and which we have hitherto not proceeded with because we knew it would be hi-jacked in this process. What degree of success we shall enjoy with that Constitutional Reform process very much remains to be seen and I think it is one of the litmus tests that lie ahead of us.

The hon Member from something that he said is obviously labouring under the misapprehension that he could not make a recommendation he has heard me make whilst I have been on my feet this morning not once but twice a voting recommendation and I think as he probably has done also made a voting recommendation. The Government's point is that it should not be included in this motion in the text of the motion because this is the omnibus motion calling and regulating the administration of the Referendum and it would be most unusual if it were to contain a voting recommendation but there is nothing to stop this House when we reconvene later on in the week to have a separate motion making voting recommendations. The point is that it should not be in this motion so as not to combine administrative neutral requirements in relation to the Referendum with party political recommendations. One of the points that always strikes me when I hear discussed the British Government's point that the only way forward are these negotiations and the only way for Gibraltar to have a prosperous, secure and stable future is that Gibraltar should agree joint sovereignty with Spain is that it begs the question well does that mean that we cannot have a stable, secure, and prosperous future if there is no deal and for the British Government to say, " because without the deal you cannot have a prosperous and stable future I am going to take into account only Gibraltar interests when I come to the deal," but the British Government's position becomes a good deal weaker morally when it says, "*...without a deal you do not have a prosperous future and there will not be a deal if I do not get my way on the naval base."* What is the British Government saying? That if it cannot satisfy their own interests in relation to exclusive control of the naval base it is willing to condemn Gibraltar forever into an insecure, unprosperous and unstable future. It is a nonsense, the British Government know perfectly well that Gibraltar has presently and can keep a stable, secure and prosperous future without the need for doing a sovereignty deal with Spain and if there is ever to be a change in Gibraltar's status it will be and only because the people of Gibraltar want it and not because it is necessary in order to guarantee a stable and prosperous future because if that is not the position then the British Government's red line issues, at least the one to do with the naval base boils down to this to an unprosperous and stable and insecure future on the question of the naval base namely if I do not get exclusive sovereignty and control over the base which would be a very selfish attitude if Britain really believed that without the deal we could not have a prosperous secure and stable future and of course she can take that line only because she knows that it is not the only way of guaranteeing a stable prosperous future for Gibraltar. At the end of the day the issue for Gibraltar is not about having a friendly Spain although we would dearly like to have a friendly Spain. Hon Members know that it is the policy of the Government to foster and generate the friendliest possible relations with Spain and best neighbourly relations and co-operation that we can engineer. Very often it is out of our control and out of our hands. The issue is not the way forward in terms of a friendly Spain. The issue is a way forward that respects the rights of the people of Gibraltar both political and also European Union and that is not a question of friendship that is a question of people being obliged to honour their legal obligations and when we have disputes about legal obligations that impact on the political discussion for example, is the Treaty of Utrecht valid, does it curtail the right to self-determination yes or no, are we a people, or the United Nations type arguments that we deploy even then it is a question of people being willing to have their legal rights adjudicated because if Spain were willing and if Britain were willing to get the advisory opinion of the International Court of Justice then we would all be having the political argument in the context of one clarified statement of rules whereas at the moment what is happening is that we are having to fight our political corner not on the basis of established

international law but on the basis of what Spain alleges international law to be. So this is not about sovereignty in exchange for friends, we do not want to put friendship and sovereignty in the same pot although I acknowledge that in large measure that is what Spain does, what we put in the pot is respect for our rights as a people and respect for our legal rights as a jurisdiction and as a territory and as a country and that is not to be bartered, this is the whole flaw in the British Government's argument recommending this deal but somehow in order to obtain respect for one's legal rights under treaties one has got to barter ones sovereignty, nobody else does that. What he means is not that we must barter our sovereignty for respect for our rights but rather that Britain and the European Community institutions the Parliament and the Commission, will not stand up for the enforcement of European Union law against Spain on the basis of the terms of the treaty but rather they want to bribe Spain into complying with her EU obligations by tossing her half our sovereignty as the price for doing what she is already obligated to do for nothing, so this is not about friendship this is about rights and obligations. The hon Member raised the question of the Falkland Islands to distinguish the point that I had made about Bermuda. I am not sure that it is entirely legitimate for him to do so as we have often both recognised and used in the past in our various speeches. In the Falklands the British Government recognises the right to self-determination.....*[HON J J BOSSANO: Not in 1968.....]* .....now recognises the right to self-determination and I was asking whether they would do it now not whether they would have done it in 1968. What on earth does the British Prime Minister feel entitles him in international law and in international, political and human rights to say that the sovereignty of Gibraltar needs to be negotiated but that the sovereignty of the Falkland Islands is non-negotiable? Wherein lies the distinction in international law? The Treaty of Utrecht, the Treaty of Utrecht does not require Britain to negotiate sovereignty of Gibraltar even on the worst interpretation against us. It does not require Britain to negotiate sovereignty and apart from the Treaty of Utrecht we have exactly the same riding stages as the Falkland Islands, so in what basis does the Prime Minister say the sovereignty of the Falklands is not negotiable but the sovereignty of Gibraltar has to be negotiated? There is no basis and finally, the last point which is the first that the hon Member made and I suppose having been with him in the House for 12 years or so now it does not surprise me that he takes any opportunity whatsoever to launch his tirade on the Brussels Agreement, there are two things that I would like to say to him on that. First of all it is not true that the current British Government are putting the Brussels Agreement to the purpose to which it was designed or intended, no, the Conservatives themselves are saying in London and in Gibraltar Mr Ancram said so when he was here and I think that the hon Member half recognised it in one of the points that he made as an aside but no Government before this one, Conservative or Labour for that matter, had expressed a willingness to enter into political agreements affecting the sovereignty of Gibraltar against the wishes of the people of Gibraltar. The Brussels Agreement does not require the British Government to enter into political agreements affecting our sovereignty against our wishes in fact it requires them to do the opposite because the Brussels Agreement says that Britain and Spain will negotiate tourism, environment, co-operation will discuss sovereignty but Britain repeats the Preamble that it will not enter into any arrangement and until now until this British Labour Government all British Governments before had preceded on the basis that both within and without the Brussels Agreement not entering into arrangements meant not signing bits of political agreement, not entering into declarations of principles, that is another of the novelties that Britain has now chosen to interpret the words of the Preamble about not entering into arrangements as if it read not implementing arrangements whereas in their ordinary language the words *"Britain shall not enter into an arrangement"* which are the words of the Preamble entering into an arrangement includes signing political documents and I have often said that I believe that by signing a declaration of principles in which Britain concedes the principle of joint sovereignty to Spain she is in breach of the language and spirit of the Preamble to the Constitution in which she says that she will never enter into an arrangement. Now she chooses to interpret the word enter as being restricted to physical implementation on the ground. Most people with a command of the English language would interpret

the word *"enter into"* as not signing up to or as including not signing up to. So it is completely novel even under the infamous Brussels Agreement it is completely novel for any British Government to interpret the Brussels Agreement as being logically leading to the conclusion of the joint sovereignty political agreement to which they have now come. No Conservative Government before now and no Labour Government have interpreted it in that way.

Mr Speaker, I thought that the hon Member's initial opening of his address I am not sure if that is what he was saying it may not be in which case I withdraw but I thought that he was saying that part of the differences between us notwithstanding which they are supporting the motion relates to the Brussels Agreement. With the greatest of respect there is no relevant division between us on the question of the Brussels Agreement there has not been and this is the debate that I am constantly having with him on television usually at election times and now in the context of this Referendum in between election times, the policy of the Government is that we do not support participation in Brussels Agreements talks and therefore we have not gone whilst they are predetermined as to their outcome on sovereignty unless we have a separate voice to neutralise the bilateralism because we, he and I , understand that Spain's obsession with bilateralism is just a way of articulating the denial of the right to self-determination and thirdly unless it was safe to do so namely unless we were safe from agreements being reached over our heads. If and there are those who think that the Gibraltar Government will never succeed in obtaining those conditions but if the Gibraltar Government succeed in obtaining those conditions it addresses all of the reasons for which he presently opposes participation in the Brussels process *[Interruption]* fine, absolutely, well it would be *[Interruption].* If the hon Member wants to stand up I will happily sit down and give way, it would be a restructured Brussels process which eliminates the dangers to Gibraltar and that is the policy of the Government those are the talks that the Government of Gibraltar would take and the hon Members may wish to continue to pretend that the fact that we do not collapse into their articulation of the anti-Brussels policy somehow means that we would go along with any of what is going on or that anything that is going on would have been preventable but the reality of it is that since 1996 our policy on participation and therefore support for the Brussels Process has been conditional on it being modified in ways which would eliminate all the objections to it. So, there is no division on the question of when it would be safe and when it would not be safe to take part in dialogue and the Government have no intention of modifying the position that it has defended since 1996 because it is rational, it is clear, and it eliminates all the possible objections to Gibraltar's participation. I do not think that the hon Member is when he asserts confidently that he agrees with Mr Straw that the Brussels process was always designed to deliver joint sovereignty I am not surprised that the hon Member rushes to agree with Mr Straw because it puts winds in his sails but Mr Straw is completely wrong and it is disingenuous of Mr Straw to say that. I do not know if the hon Member is interested in knowing that I had correspondence from Ministers of the Foreign Office declaring that the Brussels Agreement is in no way predetermined to result in any degree of Spanish sovereignty. In no way predetermined only Mr Straw and Mr Hain for the first time in July this year have made a statement that suggests that it has always been predetermined but the evidence is the contrary it has never been predetermined to result in Spanish sovereignty and I have that in writing. One thing is to discuss somebody's claim and another thing is to commit oneself to resolve it on the basis of meeting them halfway on it and the hon Member must know that and therefore I regret that the Leader of the Opposition should have taken this opportunity to revisit Brussels Agreement related issues but since he chose to do so I believe that I have been justified in clarifying that the choice is not between accepting or rejecting the Brussels Agreement in its present form, in its present form we have all rejected it, all of us have rejected participation in the Brussels Agreement in its present form. The choices are not between accepting or rejecting the Brussels Agreement in its present form, there is a third choice which is the Government's policy and that is to modify and restructure the Brussels Agreement so that it addresses, saves and eliminates all the sources of danger for

Gibraltar. People may have views about whether we are likely to achieve that just as people have views about the effectiveness of rejecting the existing structure which we have all done. The fact that the Gibraltar Government did not attend Brussels talks from 1988 to the year 2002 has not prevented the British and Spanish Governments from doing in and with it what they have pleased so just as there are people who question the political efficacy of rejecting the existing structure out of hand just as there are people who question the political efficacy and wisdom of accepting and there are some people who accept the existing political Brussels structure out of hand so people will question the likelihood that the Government will be able to succeed on the third way. So the hon Member is not going to succeed in reducing this debate, he has not since 1990 and he is not going to start now, to succeed in reducing this to a simplistic yes or no in terms of that wider dialogue debate. The question is not Brussels 'yes' or Brussels 'no' but is Brussels safe, does it respect our political rights as a people 'yes' or 'no'? We have not been able to achieve that and therefore we have not gone for the same reasons as he rejects it but where it ever possible should we ever succeed in moderating the terms so that Brussels in the words of what the hon Member his Colleague Mr Perez has just shouted from a sedentary position, *"..then it is not the Brussels Process,"* then that would be a completely different situation and that would eliminate the objections to participation and that and not the version of it set out by the hon Member in his speech, that that I have just set out is the relevant Brussels debate as far as the Government are concerned.

Question put. The amended motion was carried unanimously by all the Elected Members.

Absent from the Chamber:-

The Hon R R Rhoda
The Hon T J Bristow

ADJOURNMENT

HON CHIEF MINISTER:

I am grateful to the House for their unanimous support of the motion that I have moved. Mr Speaker, I beg to move that the House do now adjourn to Wednesday 16th October 2002 at 9.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 12.40 pm on Monday 14th October 2002.

WEDNESDAY 16TH OCTOBER 2002

The House resumed at 9.35 am.

PRESENT:

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

GOVERNMENT:

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

OPPOSITION:

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

ABSENT:

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

The Hon R R Rhoda QC - Attorney General
The Hon S E Linares

IN ATTENDANCE:

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

ANSWERS TO QUESTIONS

The House recessed at 12.35 pm

The House resumed at 12.45 pm

Answers to Questions continued.

The House recessed at 1.05 pm

The House resumed at 3.00 pm.

SUSPENSION OF STANDING ORDERS

The Hon the Chief Minister moved under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with a Ministerial Statement.

Question put. Agreed to.

MINISTERIAL STATEMENT

HON CHIEF MINISTER:

Mr Speaker, I would like to make a statement to the House in relation to the Government's proposals for the Reform of Taxation and developments in the European Commission on that subject today. The European Commission has this morning at its meeting decided to open a State Aid Investigation into the proposed reform of Corporate Taxation in Gibraltar and has this afternoon issued a press statement described announcing its decision and describing it. According to the European Commission's press release which is the only information that the Government have on the matter at this time the European Commission has today launched a formal State Aid Investigation into the planned reform of Gibraltar's Company Taxation Laws. The reform would abolish taxation of company profits and replace it with a payroll tax, that is a fixed tax per employee and a business property occupation tax. In addition to sectors, financial services and utilities would be subject to a top up tax on their profits at a rate of 8 per cent and 35 per cent respectively. At this stage the Commission has not been able to rule out the possibility that the new system would grant State Aid to certain enterprises and has doubts that any such aid will be compatible with the EU rules. This is the first time that an entire corporate tax system has been notified to the Commission for approval under the State Aid Rules. Commenting on the case Competition Commissioner Mario Monti has said, " ...the proposed reform raises questions which require a thorough investigation, however, I welcome the willingness of the United Kingdom Authorities to introduce a tax system in Gibraltar that complies fully with the State Aid Rules." I suppose the United Kingdom authorities in EU jargon means the Government of Gibraltar and this Parliament but it does not say that in the statement. The UK proposals aim to reform the taxation of company profits in Gibraltar, they will replace the existing legislation on so-called exempt and qualifying companies that forms the basis of Gibraltar's offshore sector and on which the Commission started formal proceedings in July 2001. According to the new scheme notified to the Commission by the UK authorities, companies will instead be subject to a pay roll tax of £3,000 per employee per annum and a business property occupation tax. The total liability for tax, that is payroll plus business property occupation tax will be capped at 15 per cent of profit or £500,000 whichever is the lower. If a company makes no profit it will have no tax liability. In addition to the payroll and property taxes, Financial Services Companies will be charged a top-up rate at a rate of 8 per cent of profits from financial services activities. The total taxation of Financial Services companies, payroll, plus business property occupation tax, plus top-up tax will also be capped at 15 per cent of profit or £500,000. Utility companies that is, telecoms, water, sewage, electricity, petroleum, will be taxed a flat rate of 35 per cent of profit. The reasons for opening the investigation include doubts about the impact of the 15 per cent and £500,000 caps and this is the reason why I have come before the House to make a statement, and about the advantage conferred on Gibraltar companies when compared with those operating in the United Kingdom.

The limitation of liability for payroll/property tax by means of the two caps would appear to depart from the logic of a payroll tax system and may give an advantage to certain Gibraltar companies. The whole of the Gibraltar economy except utility companies seems to be granted an advantage compared with companies in the United Kingdom in general. The main rate of corporation tax in the United Kingdom is 30 per cent of profit whilst under the reform the maximum rate of taxation in Gibraltar is 15 per cent.

Mr Speaker, I would not have come to this House to make a statement had the investigation been limited to the merits of the

Gibraltar reform itself, that much was envisaged but the Commission has added a second and wholly unenvisaged strand to its investigation which is what is known as Regional Selectivity. Given that a Member State may not within that Member State give advantages to some companies that it denies to other companies within that Member State, the Commission is suggesting that for the purposes of that rule Gibraltar is part of the United Kingdom so that it treats or it is threatening to treat or it is investigating the treatment of whether a separate tax system in Gibraltar amounts to the same breach of State Aid Regulations as for example, if Kent or Sussex or Yorkshire had a separate tax rate to the rest of the United Kingdom. Accordingly the investigation announced by the Commission falls into two categories, one which I have said was fully envisaged, namely the consideration of the merits of the Gibraltar Tax Proposals themselves, the other category which was not envisaged is the questioning of whether Gibraltar is entitled to have a different tax system to the rest of the United Kingdom at all. This argument known as regional selectivity will pit the Commission into confrontation with many Member States who themselves devolve taxation powers to regional sub-national levels, the United Kingdom, Germany amongst others. Furthermore specifically in the case of Gibraltar the argument would appear to be misconceived because Gibraltar on the terms of the treaty establishing the Union and the Community properly interpreted is not part of the United Kingdom as the United Kingdom is constantly reminding us on many dossiers and therefore I can predict that the United Kingdom will be as keen to see this argument off as anybody else. The suggestion that any part of the territory which is covered by the Community treaty has to have the same taxation system throws right up into the air the Constitutional arrangements in at least half of the Member States of the European Community.

The Government of Gibraltar will robustly defend the tax proposals during the investigation phase on the basis of both, the considerable body of pre-eminent European legal advice that the Government have received in relation to the validity of the proposals and also the United Kingdom's judgement to the same effect in respect of the vast bulk of those same proposals.

MR SPEAKER:

Although there is no debate I am inviting the Leader of the Opposition to speak.

HON J J BOSSANO:

Mr Speaker, first I welcome the fact that the statement has been made in the House and that we have not had to wait to read the press release in the media although frankly I think the statement should have been made even if the new element of comparison with the UK was not there. I think it is worth pointing out that for example, the £3,000 per employee was something the House was not told when the statement was made on the 12th July by the Government or the capping on £500,000 and therefore that seems to indicate that anything that the Government submit through the United Kingdom to the Commission, the Commission then feels free to make public and I would therefore put it to the Government that they ought to be willing to share it with us instead of us having to find out from the Commission, something that they have told the Commission.

Independent of this completely new element which seems most peculiar but was already in fact predicted in the article in "El Mundo", it seems perhaps "El Mundo" was telling the truth and not making it up when they indicated that there were sources close to the Commission indicating the way things were going because it has materialised. It said there was going to be a comparison with the UK tax structure. Our position is that we cannot reconcile what we were being told by the Government independent of that element that the rest of it was envisaged because in fact in July

we were told that consultations had already taken place and of course there is a question in the Order Paper which will be answered later on where we are seeking information to see what has been the degree of consultation between the Government and the Commission since last May. If an investigation was envisaged and presumably the length of these investigations cannot be guaranteed then one can only suppose that this puts us back to the position that we have had under the previous State Aid Investigation where the industry is unable to clearly market a product because it does not know whether the product will survive the investigation. I would have thought that in itself given what we were told about removing uncertainty is something that is detrimental to Gibraltar's Financial Services Industry independent of what the result of the investigation would be and we certainly hope that the investigation is one that does not require the Government to start again from zero. Nevertheless we are grateful that the Government have brought this to the attention of the House so quickly after finding it out themselves and we think it is wrong that the Government should have had to rely on a press release to find out and that they should not have been informed directly by the United Kingdom the moment the United Kingdom found out from the Commission.

HON CHIEF MINISTER:

Mr Speaker, if I can just answer the last point first, the United Kingdom could not have advised the Government of Gibraltar any quicker because the Commission does not inform Member States of the decisions that the Commission takes. It simply announces them and the United Kingdom does not have any more information at this moment in time than we have on this issue. The Commission met this morning made the decision and has issued a press release which we have seen this afternoon so there is no possibility of anybody having and I know that the hon Member is keen to constantly complain usually my judgement without justification that he has to discover things in the press for example, in relation to his latest statement on the "El Mundo" article, completely unjustifiable statement. I would have thought it self-evident from the way in which that story broke that it was a leak to the press which everybody discovered at the same time which is where leaks to the press are normally discovered, in the press. The idea explicit in the hon Member's recent public statement that he regrets that he had to discover this information from "El Mundo" and not from the Government assuming for which he had absolutely no right or even logical explanation that the Government had advance notice of the "El Mundo" leak is something which has become systematic on the part of the hon Members to add either at the top or at the bottom of public statements " ...it is a pity that we had to find out in the press." Well they found out in the press at the same time and the same place as the Government and everybody else in Gibraltar, that is implicit in the nature of press leaks.

Mr Speaker, I am not going to deal at this time and in this place because I am dealing with it at another time and in another place, the hon Member's statement that he cannot reconcile the Government's past statements with the statement now that the element of State Aid Investigation that has materialised in respect of the merits of the proposal were envisaged. As I say I am not dealing with it at this time and in this place because I am dealing with it at another time and in another place but let me just tell him at this stage that that statement which he has made outside of this House and has just repeated in this House is wholly incompatible and irreconcilable with not only the statements that I and the Government have made publicly outside of this House but indeed statements made by me in this House in April at the time that I made the formal statement in relation to the tax reform proposals and he may persuade himself of things and then repeat them and forget to ask himself whether indeed they are true or not, this one is not true and he can repeat it as often as he likes. It is not sustainable on the basis of publicly available statements, it is not even sustainable on the basis of statements that I have made to him in this House. *[HON J J BOSSANO: On the 12th July.....]* The 12th of July is the date of Mr Straw's statement in the House of Commons, I think that my statement in relation with

tax was I cannot remember whether it was April.....*[HON J J BOSSANO: Same day.....]* Well the same day exactly in that statement whatever day it was, as to whether the welcoming the fact that the statement is made in this House of course I welcome the fact that he welcomes it but of course it is made in this House because the House happens to be in session it is not made in this House for any other reason, it is not the practice in Gibraltar that Government policy is announced only in this House, if that were the case we could only announce policy during 15 days of the year or 20 days of the year but because the House is in session and I am available to come to this House to make a statement it is a great pleasure for me to do so and I greatly welcome the fact that the Leader of the Opposition welcomes it. The Leader of the Opposition has of course not addressed the issue that brings me to this House to make the statement which is the biggest issue upon which I have made a statement and which frankly makes the issue of whether the Government's tax reform proposals complies with State Aid or not frankly pale into relative insignificance and that is the strand of the argument which is what brings me to this House, I would not have come to this House just to tell them that the European Commission has issued a press release saying that they have announced an investigation but the fact that they are invoking the regional selectivity argument has massive Constitutional and Economic consequences for Gibraltar if it were to prosper which I think is an extremely remote possibility.

Just before I sit down in case the Leader of the Opposition wants to stand up and say anything else, the entire process of Government consultation with the industry and the public statements that the Government have made on this issue have been on the basis that this had to be submitted to the Commission for clearance, a fact which he himself recognised in the questions that he asked me after the statement which if he is right I made on the 12th July and therefore no one in the industry is surprised by this. The Government are not surprised by it, the Government's legal advisers are not surprised by this, the industry is not surprised by this, the Government have made plenty of public statements in the past that should not enable anybody to be surprised. The only person who is surprised by this is the hon Member who appears to think that this was not envisaged at all and I do not know why he has chosen to jump at that issue but I hope that he will be satisfied in due course that that is simply not the case as statements issued by the Finance Centre Council yesterday have confirmed and therefore the only issue which is frankly a surprise is this business of regional selectivity as it is called and it is an issue which I know from past experience the United Kingdom is vehemently opposed to enabling the Commission to argue not just in respect of Gibraltar but for example, in respect of the devolved administrations in the United Kingdom who have certain tax raising powers and discretion, even in the United Kingdom and there are many other countries of that sort. Does it add to the uncertainty? Of course it adds to the uncertainty but if he examines Hansard of our exchanges on the 12th July he will know that that issue is addressed as well in our exchanges post the formal statement of the 12th July as to what the Government can do or is advised it can do come July next year which is the commencement date that we had targeted if we still do not have clearance of the scheme because it is highly unlikely that the whole scheme will be challenged. There may be elements of the scheme and that is open to modification as I explained to him, he may have forgotten, in the House on the 12th July 2002.

ANSWERS TO QUESTIONS (CONTINUED)

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Thursday 17th October 2002, at 9.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 7.25 pm on Wednesday 16th October 2002.

THURSDAY 17TH OCTOBER 2002

The House resumed at 9.35 am.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon K Azopardi - Minister for Trade, Industry and Telecommunications
The Hon Dr B A Linares - Minister for Education, Training, Culture and Health
The Hon 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 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 H A Corby - Minister for Employment and Consumer Affairs
The Hon Mrs Y Del Agua - Minister for Social Affairs
The Hon R R Rhoda QC - Attorney General
The Hon T J Bristow - Financial and Development Secretary

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 lay on the Table:

(1) The Gibraltar Regulatory Authority audited accounts for the years ended 31st March 2001 and 31st March 2002; and

(2) The Annual Report of the Board of Charity Commissioners for the year 2001.

Ordered to lie.

Answers to Questions continued.

The House recessed at 11.25 am.

The House resumed at 11.35 am.

Answers to Questions continued.

The House recessed at 1.20 pm.

The House resumed at 5.00 pm.

Answers to Questions continued.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Friday 18th October 2002, at 9.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 7.30 pm on Thursday 17th October 2002.

FRIDAY 18TH OCTOBER 2002

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 J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social Affairs

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

ABSENT:

The Hon H A Corby - Minister for Employment and Consumer Affairs
The Hon R R Rhoda QC - Attorney General
The Hon E G Montado OBE - Financial and Development Secretary (ag)
The Hon S E Linares

IN ATTENDANCE:

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

Answers to Questions continued

The House recessed at 11.35 am

The House resumed at 11.45 am

Answers to Questions continued.

PRIVATE MEMBERS' MOTION

HON J J BOSSANO:

Mr Speaker, I wish to move the suspension of Standing Orders so that the motion of which I have given notice can be taken given the fact that it deals with a recommendation on the Referendum and obviously if it was left to its normal place in the Agenda of the House according to Standing Orders it might come after the event.

Question put. Agreed to.

HON J J BOSSANO:

Mr Speaker, I beg to move the motion on which I have given notice on the 14th October 2002 namely that :

"This House

(1) Rejects the broad agreement in principle arrived at between Her Majesty's Government and the Government of the Kingdom of Spain announced in the House of Commons on 12th July 2002;

(2) Considers that the agreement in principle provides for Gibraltar and its people to pass partly under the sovereignty of another state and constitutes entering into an arrangement contrary to the Preamble to the 1969 Constitution;

(3) Considers the aforesaid broad agreement in principle is contrary to the wishes of the vast majority of the people of Gibraltar;

(4) Calls upon the people of Gibraltar to make every effort to cast their vote in the Referendum to be held on the 7th November 2002 and to reject the principle of sharing sovereignty with Spain by voting "No".

Mr Speaker, there are a couple of alterations which were indicated to me by the Government as improvements to the text and given that I am in the process of moving I presume that if I alter it we do not need to go to the process of moving amendments and voting on the amendments. Am I right?

MR SPEAKER:

If it is agreed.

HON J J BOSSANO:

That would be, the Chief Minister will correct me if I am wrong. The suggestion was that we should introduce "…. *for the territory and the people of Gibraltar,"* to make sure that we were not excluding the territory which is mentioned in the Referendum.

HON CHIEF MINISTER:

I thought, "*Gibraltar and its people to pass under the sovereignty…."*

HON J J BOSSANO:

"Gibraltar and its people to pass partly under the sovereignty of another state…" and that would be in substitution for the words, "*..provides for the people of Gibraltar….."* and then in the subsequent paragraph were we are saying "*we consider that the majority of the people are against this*," *"….as evidenced by the demonstration of the 18th March 2002 and the resolutions previously carried by this House.*"

Mr Speaker, in moving this motion I had the idea when we were discussing the previous motion and the Chief Minister indicated that he did not feel that in the context of that motion there should be a recommendation as to what this House feels ought to be the way people should vote but he said that there was nothing to stop that being done in a separate motion and I interpreted that to be an invitation to bring a separate motion that is why I have done it. We have already effectively jointly recommended to people that there should be every effort made to attend this very important occasion, it is a major landmark in the history of our country and our people and it is important that we should demonstrate our unity so that there is no doubt as to what we want and what we do

not want and therefore I do not think I need to go over ground with which we are all familiar and on which we are all united. I commend the motion to the House.

MR SPEAKER:

Yes, you have amended the motion, put it in writing in due course.

Question proposed.

HON CHIEF MINISTER:

Mr Speaker, I think that I share the Leader of the Opposition's view that the arguments were really orally rehearsed when we were speaking to the what I call the 'omnibus' Referendum Motion, I think we both expressed our views and our recommendations and I do not wish to go over them again suffice to say that it is the recommendation of the Government that people should vote 'No', 'No' to the principle of joint sovereignty that it is important that people turn out to vote, that no one should feel that because the result is assured they are not going to take the trouble to vote because their vote is not going to make a difference to the result. The result here is not just about which option gets the majority but about the extent of the majority in favour of 'yes' or in favour of 'no' and therefor every vote counts because every vote adds to the extent of the majority saying 'no' and reduces the number of people that can be said to have been not bothered to vote at all because if the electorate turns out to be about 20,000 and only 18,000 people go out to vote people could mischievously say, "well there are 2,000 people who do not care. Well if they do not care enough to go and say 'no' they are halfway to saying 'yes', therefore we will add those to the 'yes' votes for the purposes of a political calculation that London or Madrid may wish to make." Therefore I endorse the Leader of the Opposition's view that it is vital to Gibraltar that everybody takes part in this Referendum, that people mobilise on the 7th November, that they do not take the view that their vote is not needed, everybody's vote is needed and that the recommendation of all the Elected Members in this House is that Gibraltar should vote 'No'. 'No' because we do not want Spanish sovereignty, 'No' because even if we did want Spanish joint sovereignty we are convinced that it would not deliver the benefits that this alleged offer is capable of delivering, even if we were willing to consider joint sovereignty so that what we were looking at is the rest of the package and that is not the case, but even if that were the case I think that people in Gibraltar will come to the conclusion that Spain is not in a frame of mind to offer us more rather than less self-government, that Spain is not in a frame of mind to offer us economic prosperity, look how she has reacted to our difficulty with the European Commission on State Aid and therefore even if there are people in Gibraltar for whom it is a matter of the package, the package is not a reason for voting 'yes' but for the vast majority of people in Gibraltar I would hope that it is not a matter of the detail of the package because joint sovereignty as a principle is unacceptable to Gibraltar, it is unacceptable to Gibraltar because we do not want any degree of Spanish sovereignty over Gibraltar and it is unacceptable to Gibraltar because it condemns all our future generations to a permanent near colonial status. I am therefore delighted that the whole House is making the same recommendation to the people of Gibraltar on this occasion and that all the political parties in Gibraltar will actively campaign to mobilise the vote and to mobilise the 'No' vote in particular.

HON J J BOSSANO:

I do not think there is any need to reply. The position is perfectly clear and we certainly will be demonstrating the level of mobilisation when the time comes.

Question put. The amended motion was carried unanimously by the Elected Members present.

Absent from the Chamber:-

The Hon Lt Col E M Britto
The Hon H A Corby
The Hon R R Rhoda
The Hon E G Montado
The Hon J C Perez
The Hon S E Linares

HON CHIEF MINISTER:

I was just going to propose that at some stage when the House is complete as to the Elected Members we may want to have a technical opportunity to vote on this again so that the 15 elected Members of the House will have voted, the Hon Mr Steven Linares is away from Gibraltar, the Hon Mr Ernest Britto is missing from the Government benches, it is carried unanimously but for political value and effect I would like this vote repeated at some stage with all 15 Elected Members of the House because that gives it more force.

BILLS

FIRST AND SECOND READINGS

THE BANKRUPTCY AMENDMENT ORDINANCE 2002

HON CHIEF MINISTER:

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

Question put. Agreed to.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Monday 18th November 2002 at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 1.50 pm on Friday 18th October 2002.

MONDAY 18TH NOVEMBER 2002

The House resumed at 10.00 am

PRESENT:

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

GOVERNMENT:

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

OPPOSITION:

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

IN ATTENDANCE:

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

DOCUMENTS LAID

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

Question put. Agreed to.

The Hon the Chief Minister laid on the Table:

(1) A copy of a special report prepared by the Ombudsman – Case No 152 – Disposal of Refuse to Spain; and

(2) A copy of a special report – Case No 288 – Complaint by Mr Gbassy Turay against the Civil Status and Registration Office.

Ordered to lie.

MOTIONS

HON CHIEF MINISTER:

I have the honour to move the motion standing in my name and which reads as follows:-

This House,

(1) Confirms the appointment by the Chief Minister pursuant to Section 3(2) of the Public Service Ombudsman's Ordinance 1998 of Mr Mario Hook as the Ombudsman for Public Services for all the purposes of that Ordinance with effect from Wednesday 1st January 2003.

(2) Resolves pursuant to Section 4 of the Public Service Ombudsman's Ordinance 1998 that a salary of £40,000 per annum be paid to the Ombudsman with increases in accordance to the annual civil service pay award and that the additional sum of £125,000 be paid to the Ombudsman in respect of the expenses of his office including the personal emoluments of staff and other operating expenses.

(3) Congratulates and commends the retiring and first Ombudsman Henry Pinna for the effective manner in which he has conducted the duties of Ombudsman and has established the post since its creation in 1998.

Mr Speaker, Mr Pinna accepted appointment as Ombudsman for a three year period and I have to say that he reluctantly accepted it for that length of time. He would have wanted it shorter but in keeping with his long-standing and well deserved reputation for commitment to public issues he not only agreed to accept it for three years, that would have been with effect from April 1999, but indeed that he agreed to extend it to the end of this year, that is the 31st December 2002. He now wishes to retire and therefore we are reluctantly in the position of having to choose a replacement for him.

Mr Pinna being the first Ombudsman that has served in Gibraltar was instrumental in various important respects, he set the office up, he recruited the staff, he devised the working practices, the working methods, he devised the guidelines for the general public, in every respect he took the project of the Ombudsman's Office from the legislative phase once this House had passed the legislation to everything that needs to be done in order that it should provide the service to the public that it was intended to and has been providing it and that is all entirely down to Mr Henry Pinna's hard work, commitment and vision about his view of how an office of an Ombudsman should work. He has then also been the first Ombudsman and I think that when the Government in satisfaction of our manifesto commitment in that respect established the Office of Ombudsman in order to give the ordinary citizens a more balanced level playing field, when they deal with an obviously well resourced and more powerful administration, I think we could only have dreamt and hoped that that service, that office would so quickly have become an established institution delivering the service to the general public in a way which in many small countries that have had an Ombudsman's Office for much longer and it is still not working. In other words accepting as we all have to do that there is a learning curve to be gone through when an Ombudsman system is first established the Ombudsman needs to become familiar with the edges of his area of responsibility and authority, the Government and the public administration has to go through the same process and eventually the equilibrium is found and everybody knows where the

parameters of their responsibilities are, that takes much longer than it has taken in Gibraltar and I think that we have had almost from the moment that he opened his doors to the public an Ombudsman service which has operated as if it had been established for much longer. I think for that we have to be grateful to Mr Henry Pinna and also of course to the hardworking staff that he selected and in that respect I am satisfied that what the Government said on the 31st March 1999 in a press release when we appointed Mr Pinna I think has turned out to be a hope well based and demonstrated by subsequent events to have been well based. The Government said, " The Government believe that Mr Henry Pinna is admirably qualified for this important new post, he is currently Chairman of Action for Housing and a member of the District Committee of the Transport and General Workers Union. All his adult life Mr Pinna has been a tireless campaigner for the rights and interests of his fellow citizens in this community. His reputation for integrity and independence of mind precedes him, the Government are confident that Mr Pinna brings to the office the qualities necessary to establish it effectively and irrevocably from the very outset of its existence. As I say, I believe that that confidence was entirely justified and well placed and an office which established differently might not have had the impact that this has had and might not even have survived, I think has turned out to be a service which is now ingrained for all times in our institutions as a community. The House will have seen and I am sure will have been impressed by the reports that we have had from Mr Pinna whilst he has been Ombudsman, we have had an 18 month odd report for 1999/2000 that was his first report published in December 2000, he published an Annual Report in December 2001 and he will be drawing up the report for 2002. So, I can tell the House that although the Government do not always agree with the recommendations of the Ombudsman already his existence and his reports are having a considerable impact on the public administration and indeed on the citizenry not just because the Government accept the vast majority of his reports but also because the fact that the Ombudsman Office exists and the public servants know that it exists and that citizens can have recourse to it does sharpen the pencil and does mean that public servants are more focused on the need to be as sensitive as policy and the law requires them to be to the lot of the ordinary individual citizen and therefore those were the two reasons why the Ombudsman Office was set up and the reports and the work that it does I am entirely satisfied and so are my Colleagues that the Ombudsman Office has served precisely the purpose for which this Government established it.

Mr Speaker, turning to the appointment of the new Ombudsman, hon Members will be aware that under section 3 of the Ombudsman's Ordinance it says that there shall be appointed an Ombudsman for public services for the purposes of conducting et cetera, et cetera subsection (2) - The Chief Minister may from time to time by notice in the Gazette appoint a person to be the Ombudsman, appointments under subsection (2) shall come into effect upon the House of Assembly confirming the appointment by way of resolution passed within 30 days of the appointment. A person appointed under subsection (2) shall subject to the provisions of this Ordinance hold office during good behaviour for such term as shall be specified in the notice appointing him, and that is the resolution that we are debating today in the House, Section 4 deals with the remuneration and expenses of the Ombudsman and says “there shall be paid to the holder of the office of Ombudsman a salary, expenses and allowance at such rates as may from time to time be determined by resolution of the House of Assembly. The salary, expenses and allowance of the Office of the Ombudsman shall be a charge on the Consolidated Fund without the need for Appropriation” and therefore the motion in its formal aspect does those two things that this House requires to do by resolution. Firstly, ratify the appointment of Mr Mario Hook whose appointment by me has been gazetted recently and certainly within the last 30 days as required in the Gazette and also by resolution; the second thing that we are doing is fixing not just the salary of the Ombudsman which is fixed at £40,000 per annum with increases of the same amount as the civil service general award but also in a sense approving the budget for the Ombudsman's Office from which he has to pay all his operating expenses including staff salaries and other payroll costs.

Mr Speaker, Mr Mario Hook, the person that the House is being asked to confirm in his appointment has been with just a very small interruption in time on the staff of the Ombudsman's Office almost from the beginning. He was an investigative officer recruited by Mr Pinna the outgoing Ombudsman. Since he has started working in the Ombudsman Office he has qualified as a lawyer, indeed as a practising lawyer, not just a lawyer with a degree but as a lawyer called to the Bar as of England and Wales by distance learning. I am therefore satisfied and so are the other Government Members that he has all the attributes required for a successful Ombudsman and that we are confident that he will make a worthy successor to fill the large shoes that Mr Henry Pinna will leave behind him under his desk in Governor's Lane when he steps down on the 31st December 2002. I commend the motion to the House.

Question proposed.

HON J J BOSSANO:

Mr Speaker, I think it is regrettable that Mr Henry Pinna could not be persuaded to carry on. When the original motion to create the post was brought to the House the Chief Minister has reminded us of the track record of Henry Pinna in taking up with the Public Authorities in Gibraltar problems that ordinary citizens had on a voluntary basis because he believed in helping people and I think that was an important element in the contribution he had to make to this although there is a technical side to it of course. There was no doubt in our minds that the kind of person in a small place like Gibraltar that would be most useful in doing the job of Ombudsman would be somebody that already was familiar with helping people and already people were comfortable with in terms of having confidence in his independence and in taking up issues. I would have thought without in any way wanting to judge how well the shoes will be filled by his successor that it would have been worthwhile if Henry could not have been persuaded to carry on to see if there were other people from previous record of commitment to social causes one could find a suitable candidate. I know that the benefit of Mr Mario Hook is that he has already worked there and will have learned from Mr Henry Pinna and I know that he has recommended him but nevertheless I think it would have been useful if we had a number of possible candidates available or under consideration and it might well have been that in that kind of process Mr Mario Hook might still have been the best potential candidate but from the letter that I got from the Chief Minister on the 18th October 2002 there was no indication that anybody else had been considered and all that the letter says is what we have heard today that the Government had decided to appoint him, that they were convinced that he was eminently suitable for the post and that he had become a lawyer by distance learning and of course we recognise that having worked alongside Mr Pinna and having worked in that office is an advantage in that he has seen the office from the beginning, he has seen how it is worked, he knows how Mr Pinna has dealt with problems and one would expect him to carry on in that tradition but nevertheless in looking for an Ombudsman in Gibraltar the original concept of looking for somebody that previously had worked in the community as Mr Pinna had in the Unions and in pursuing social cases in relation to Housing was something that was very useful particularly since we find that quite often it is in those areas that the people who go to the Ombudsman with grievances from the cases we see quite often that there are the kind of issues that have been previously sometimes dealt with by the Union because the Union used to deal with everything and when they could not deal with it in the Union they went to Action for Housing. Given that the Government have decided that Mr Mario Hook is the best or possibly the only available candidate we will be supporting the motion and we wish him the best of luck in his post and we hope that he will be able to do as good a job as Mr Pinna has done.

Question put. The motion was carried unanimously.

BILLS

FIRST AND SECOND READINGS

THE SUPREME COURT ORDINANCE (AMENDMENT) ORDINANCE 2002

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Supreme Court Ordinance so as to transpose into the law of Gibraltar Directive 98/5/EC of the European Parliament and of the Council to facilitate the practice of the profession of lawyer on a permanent basis in certain States other than the State in which the professional qualification was obtained, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill inserts new parts 6 - 11 into the Supreme Court Ordinance, it implements Council Directive 98/5 the full title of that directive is 'To facilitate practise of the profession of lawyer on a permanent basis in certain States other than the State in which the professional qualification was obtained.' The Bill compliments two pieces of existing legislation which have a bearing on lawyers practising in Gibraltar. The first piece of the existing legislation is that regulated by Part 4A of the Supreme Court Ordinance. Part 4A implements the Lawyer's Directive 77/249 which allows lawyers based in one Member State to provide legal services in another. The second piece of existing legislation is the recognition of Professional Qualifications Ordinance which transposed the mutual recognition of Qualifications Directive 89/48. That Ordinance in its application to the legal profession facilitates joining the legal profession in Gibraltar. It requires the Competent Authority to take account of the applicant's existing qualifications and if appropriate to grant exemption from all or part of the specified aptitude test. In Gibraltar the Competent Authority is the Chief Justice. Under the conditions specified in this Bill a European lawyer may carry out professional activities otherwise reserved to Gibraltar solicitors or barristers and may apply to become a Gibraltar solicitor or barrister. Such lawyers would be allowed to practice in Gibraltar the law of their home state, the law of Gibraltar and Community and International Law. It is a condition that such a lawyer would have to be registered with the Competent Authority that is in our case the Chief Justice and be subject to the ethical and disciplinary regime of the Gibraltar Bar.In its approach the Bill has some transitional provisions and an interpretation clause lists in the definition in subsection (2) of section 41 it lists the titles of lawyers in the other Member States and hon Members will find in the Bill there, it is set out quite unusually for our sort of legislation, in sort of tabular form in the body of the Bill and then the Bill deals with both the mechanics of the registration and also for the obligations and rights of what are called European Lawyers once they are registered. So Section 43 and 44 deal with the practice of professional activities, the titles and descriptions to be used by a registered European Union lawyer. Section 45 provides that such lawyers may practice in partnership in Gibraltar either with a Gibraltar lawyer or indeed with another European lawyer so I suppose two European lawyers qualified in another Member State could set up a practice in Gibraltar under their names and there are provisions also to ensure that when somebody applies to become a European lawyer in Gibraltar if he is in partnership with somebody else in his home country even if his partner is not

going to practice in Gibraltar the Gibraltar Competent Authority must be given full details of any partnerships that this person has to ensure that there are no ethical or disciplinary issues through the person of the partner of the applicant. Section 48 gives these people, called European lawyers, the right to represent people in courts provided that they are supported by or are supporting rather a Member of the Gibraltar Bar but they do have the right of audience albeit in the company of a Gibraltar barrister in our courts. Section 49 deals with the issue of which lawyers can practice in property transactions, that is conveyancing, and in probate that is the administration of estates, wills and things of that sort and the regime created by the directive and therefore carried forward into this Bill is that where in the home country, the country in which the lawyer has qualified, certain activities are reserved for professions other than lawyers they cannot get the right to do it in Gibraltar if in Gibraltar it is done by lawyers. For example, if in Spain property transactions are done not by lawyers but by notaries public then Spanish lawyers cannot have the right in Gibraltar to do real estate conveyance and transactions, so hon Members can see at section 49 that in (a) and (b) one deals with property conveyancing the other one deals with estate administration that a European lawyer is not entitled to prepare for remuneration any instrument creating or transferring an interest in land unless he has a home professional title obtained in Denmark, the Republic of Ireland, Finland or Sweden because those are the only four countries in Europe in which lawyers do conveyancing work. Therefore the others cannot have for their nationals in Gibraltar a right which they do not enjoy in their own countries and the same applies for administration of estate where the list is just a little bit longer because it also includes Germany and Austria where lawyers also do administration of estates and that is the limitation for those purposes here in Gibraltar. Section 50 entitles them to legal aid when they are legal aid insistence when they are representing clients who qualify for that and Part 8 deals with the registration process from which the hon Members will see that it is a relatively simple system of the provision of certificates by the Home Regulator, the Home competent authority with whom there can be communication between the Home competent authority and the Host competent authority so we would be the Host competent authority when foreigners want to practice in Gibraltar and we would be the Home competent authority when a Gibraltar lawyer wants to exercise these rights in one of the other Member States where of course they exist for the benefit of Gibraltar lawyers. So, it is basically an exchange of certificates between the competent authorities. The competent authorities in Gibraltar, if it is an inward registration, that is the Chief Justice registers the applicant lawyer and at that point he becomes what is called a European lawyer with right to practice in Gibraltar under the style of European lawyer or the style of his home country advocate or whatever it is with the right to do all the things set out in the Ordinance and the main ones of which and the limitations to those rights I have briefly outlined for hon Members. There is a right of appeal to a refusal by the competent authority in Gibraltar to register and that appeal is to the Court of Appeal. There is then an offence of pretending to be a registered European lawyer and there are provisions about publication of the fact that a lawyer has been registered. Part 9 deals with regulation and discipline from which the hon Members will see that once registered as a European lawyer under this regime such lawyers become fully subject to the same disciplinary code and procedure and regime as affects solicitors and barristers enrolled or called in Gibraltar. Part 10 sets out the mechanics of the application for registration and sets out some exceptions, transitional exceptions for lawyers from other countries that may have been practising in Gibraltar for three years and hon Members will see that in section 64 some transitional exemptions in reduction of the registration criteria otherwise set up in the Bill.

Mr Speaker, I will be moving an amendment to the definition of competent authority. I will be moving an amendment of which I have not given written notice because I have just spotted that this morning that the competent authority in relation to Gibraltar means the Chief Justice and to delete all the words that follow it which is the standard formula that is used where the competent authority might change and indeed in this whole area and I seem to recall I made this point when we brought the other two pieces of legislation of which this is an ancillary part that there is in the

Bar a debate about whether the Chief Justice should be the Administrative competent authority. Everybody accepts that he should be the Disciplinary competent authority but there is a debate about whether in terms of registering people who are enforcing EU Rights whether that should continue to be the Chief Justice who has traditionally been the competent authority for all elements of the legal profession in Gibraltar. As far as the Government is concerned we are perfectly happy that it should remain as it has historically been the Chief Justice or if the Bar and the Judiciary come to a different view together that the role should be split and only were there to be such a decision would there be any prospect of their needing to appoint anybody other than the Chief Justice. I think that that is sufficiently remote not to require it to be provided for in this legislation and therefore I will be moving that amendment. I commend the Bill to the House.

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

HON J J BOSSANO:

Mr Speaker, one of the first questions we are going to try and seek clarification with general principles of the Bill was the one that has just been clarified which is the fact that the definition of competent authority created the possibility of any person being appointed competent authority who had no knowledge of what the Judiciary means or what is required. In terms of the drafting of the Bill what we have done as we usually do with these things is to look closely at the requirements of the directive and although we see that, for example, in section 65 where we have the provisions on the aptitude test and the person being exempt from the aptitude test it actually follows closely the wording of article 10 in the directive itself. To us it seems peculiar that the provision in the law would say that the aptitude test can be avoided, that is to say he can apply to the competent authority for exemption from the requirement if he falls within subsection (2) or (3). In (2) it says he has to have a period of at least three years of having pursued the activities in Gibraltar before he can claim exemption from the aptitude test and then in subsection (3) it provides the alternative that he may have pursued for three years the professional activities under his home professional title and for less than three years effectively and regularly pursued in Gibraltar professional activities in the law of Gibraltar. So, in fact the alternative seems to be that he has either pursued in Gibraltar activities in practice in the law of Gibraltar or he has not done that and then he has done less than three years in Gibraltar of practising the law. I would have thought that if one has a provision that says that he has been practising the law of Gibraltar for less than three years he need not have practised the law of Gibraltar at all because there is no lower limit than three years. I can understand a provision that says he must do something for three years but a provision that says that one must do something for less than three years does not seem to me to be logical since by not doing it at all by definition is doing it for less than three years and I wondered whether in the drafting of that we were creating something there that seems to negate the requirement of paragraph 2 of sub section (2). In section 68 it says, " *Where the competent authority fails to take a decision and notifies the Register of European Lawyers within four months it shall be deemed to have taken the decision to reject this application and to have notified him on the last day of that period.* " I do not know whether this is something that the directive itself provides for but I would have thought if the competent authority is required to give an answer then we should not be providing in the law that if it simply ignores the application and does not answer and four months have gone by it would be deemed to have rejected the application. I do not know whether this is something that we are doing it because we want to do it as a matter of policy in Gibraltar or whether in fact the directive itself does it in order to put a time limit to the time within which an answer has to be given.

There was also the question of the publication of the Register. The directive makes provision that the Register of the European Lawyers shall be published where the competent authority

publishes the Register of local lawyers and we in our legislation we are saying where the competent authority publishes the Register it shall publish the names of the European lawyers registered with it which is in section 59 (1). I would have thought that this which is almost straight out of the directive is because of course '*where*' in the directive means "*in those Member States where this happens,*" whereas in Gibraltar either the competent authority publishes the Register or does not publish the Register so I would have thought the "*where*" there was the wrong way to make that provision given that I do not know frankly whether the competent authority currently publishes the names of solicitors and registers but if the barristers and solicitors operating in Gibraltar are on a register which is published by the Chief Justice then what the directive says the European lawyers that are registered as a result of this new law should also be included in the publications of those names. Therefore I would think that ought to be drafted in a way which reflects whatever the practise is whether it is to publish or not to publish it but the *"where"* in the directive in the context in which the directive provides it seems to me on reading it to be intended to say, "*those Member States where this happens should treat European lawyers the same and those Member States where it does not happen obviously do not have to do it.*"

As regards the general principles of the Bill then obviously we are supporting this and the only point as a matter of general principle that I would make is the question of notification of the competent authority to other Member States and to the European Commission, I take it that the United Kingdom will be notifying everybody that there is a separate competent authority for Gibraltar given that the directive itself mentions competent authorities in the United Kingdom and Ireland and there is no reference in the actual directive, in the Member State UK, there being any other competent authority.

HON CHIEF MINISTER:

Mr Speaker, dealing just with some of the points that the hon Member has raised let me just tell him that as a matter of principle the instruction under which the draftsmen operate is that they should, unless they have a specific policy steered to the contrary, in other words that the Government want to take the opportunity to do something for domestic purposes in addition to the directive, the standing instructions to the Government draftsmen is that they must transpose the directive on a minimalist basis. In other words creating the fewest possible burdens and maximising or at least putting to the Government for political decision the question of the exemptions, deviations and derogations which are allowed for under the directive so that a political decision can be made about whether Gibraltar should maximise the use of exemptions or not. Obviously the decision is to do so especially when it is an area such as this not just in Gibraltar but I think in all Member States.

Mr Speaker, I am assured that the drafting of section 64 (2) and (3) is accurate, the hon Member would have noticed that the difference is that in subsection (3) in little (c) there is a reference to the last word in the law of Gibraltar the choices are either, three years registration and Gibraltar law activity has been full time that is little (2); or little (3) three years work in Gibraltar as a lawyer and Gibraltar law has only been part of the work and all subject to the over-riding safeguard that it is up to the competent authority to decide whether any of these concessions should be offered at all because the competent authority may accept applications from people in the circumstances set out in the transitional circumstances set out in (2) and (3) and I suppose precisely one of the things that the Chief Justice will be concerned to ensure is sufficient familiarity with Gibraltar law. I am assured that (2) and (3) are separate options, separate permutations and that (3) does not, which I think was the hon Member's concern, that (3) does not dilute the requirements of subsection (2), little (a) is common to both, " ...*he is a European lawyer and has been registered with the competent authority for at least three years.*" That is exactly the same in both (2) and (3) and that simply means registration

because he can be registered but not actually be here practising. Little (b) is also common to both, "*.....he has for a period of at least three years effectively and regularly pursued in Gibraltar, professional activities under his home professional title....,"* in little (b) in (2) it goes on to say,"*...in the law of Gibraltar, "* and in (3) it stops and the law of Gibraltar is introduced in (c). "*...he has for a period of less than three years effectively and regularly pursued in Gibraltar professional activities under his home professional title in the law of Gibraltar."* So, (3) is registration for three years effectively and regularly pursued in Gibraltar professional activity under his own title, in other words registered and present but not for all the whole of three years in the laws of Gibraltar, during those three years it has not all been the law of Gibraltar or it has not been the law of Gibraltar for the whole three years.....*[HON J J BOSSANO: Or at all.....]* ...or at all but then the hon Member has got to understand that the competent authority is then not obliged to do this. We have got to assume that the Chief Justice is going to protect the interests and the judiciary and the consumer that is why this is permissive and not mandatory.

Mr Speaker, I agree with the last point the hon Member made which is about the publication that it should be, I am not aware of any requirement of the directive that requires a separate regime for European lawyers and that it ought to be the same. I do not think speaking from memory and as an inactive Member of the Bar I do not think there is a publication at the moment, no, the roll and the list of people called to the Bar I think are available for inspection at the Registry of the Supreme Court but the list and roll are not themselves published in the sense of including them in any publication but they are published in the sense that they are available for inspection in the Registry of the Supreme Court.

Mr Speaker, the last point the Leader of the Opposition made on competent authorities, this is a classical case where the communications between the competent authorities would be through the post boxing. Post boxing arrangements were supposed to permit and do permit that in an appropriate case there should be specific mention of the separate Gibraltar competent authority, the Leader of the Opposition will remember those historical cases which are the few cases where there has been a separate Gibraltar mention, some scheduled to some companies directive some time ago, it is has never been the practice for Gibraltar to be separately mentioned in the body of the directive as opposed to in a schedule attached to a directive where, for example, there is a list of the different arrangements in the different countries and certainly the competent authority agreements that were entered into in April 2000 were intended to permit in the future that the specific provision could and should be made for Gibraltar in any schedule or annex where, for example, it lists the different arrangements in the different parts of the European Community.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question proposed. Agreed to.

THE TRANSFER OF SENTENCED PERSONS ORDINANCE 2002

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to give legal effect to the Council of Europe Convention on the Transfer of Sentenced Persons done at Strasbourg on the 21st day of March, 1983, as supplemented by the Agreement on the Application among the Member States of the European Communities of the Council of Europe Convention on the Transfer of Sentenced Persons done at Brussels on the 25th day of May, 1987, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill implements into the law of Gibraltar the convention that exists between Member States of the European Community and of the Council of Europe on the transfer of sentenced persons. The measure is brought to the House as part of the range of measures that form part of the Schengen Acquis that Gibraltar is to participate in or has been committed to participate in. As the name and the long title of the Bill suggests the Bill creates a regime whereby persons who have been tried and convicted and sentenced to prison in Gibraltar can apply to be transferred to their home countries in Europe to serve out the sentence and vice versa , that is to say Gibraltar belongers who are tried, convicted and sentenced in other Member States can apply to those Member States to be transferred to Gibraltar to complete their sentence here. The regime created for that purpose under the convention is basically one of application by the prisoner and the hon Members will see that the consent of the prisoner is essential for a transfer in either direction. This is something that is initiated by an application by the prisoner and that in terms of the transfer out of prisoners from Gibraltar the application is made, if the safeguards set out in sub section (3) of section 5 on page 149, if all those safeguards are met, for example, that the sentenced person concerned for the purpose of the convention is regarded by the administering State as a national of that state, in other words the administering State is the transferee state, that the order under which the sentence concerned was imposed on the sentenced person is final, one cannot transfer anybody out if they are still subject to a right of appeal because that appeal could succeed and they may end up not being sentenced. That at the time of the receipt of the application the sentenced person had at least six months of the sentence concerned served. One cannot ask to be transferred out within the last six months of one's sentence and there was another one that the sentenced person or in the case where the Government or the administrative State condition of the sentenced person the legal representative of the sentenced person or any other considers it necessary because the age or physical or mental person considered by the Government consents in writing to the transfer. There is also an obligation to explain this right to all sentenced people so that when people in Gibraltar non-belongers are sentenced in Gibraltar, nationals of other states, there is an obligation to bring to their notice the existence of this legislation and of this regime so that they know that they have the right to apply for a transfer out and then if the application is approved locally then it is transmitted to the competent authority in the administering State , the transferee state the state to which the prisoner wishes to be transferred, a warrant is then issued if the transferee competent authority agrees but *'agrees'* means *'has to agree unless he is allowed to disagree to receive the prisoner because everyone has got exactly the same regime in place.'* A warrant is then issued and

arrangements are made to transfer the prisoner obviously in secure conditions into the custody of the competent authorities in the transferee countries and then when there is a request to transfer people into Gibraltar there is then a slight difference to the regime in that the Supreme Court has to issue an Order extending the custodial sentence to Gibraltar. In other words, there is no jurisprudential objection to sending a prisoner that one has sentenced with his consent out to serve the sentence elsewhere but in order to receive into one's territory a prisoner that has been sentenced elsewhere one needs the cover of one's courts. There has got to be some lawful basis, *'lawful'* within the meaning of the laws of one's country to continue to keep somebody in detention and because this is a person that has not been tried, convicted and sentenced in Gibraltar the same applies when a Gibraltar prisoner arrives in Denmark, the Danish Courts have got to provide legal cover for that continued detention in Denmark. So, when any country including Gibraltar, receives a prisoner from outside, the Courts of Gibraltar have got to approve of the procedure and issue an order which provides legal cover for the detention of that person from that moment on in Gibraltar given that that person has not been subject to any legal process in Gibraltar that would otherwise justify that incarceration. There are provisions which allow the Court at that point in Gibraltar to modify the sentence to be a sentence which is compatible with the sort of sentence that that person would have received if he had been convicted of that sort of offence in Gibraltar. So, if a person, for example, driving without insurance policy a hanging offence somewhere and the person convicted arrives in Gibraltar with a sort of 35 years sentence of imprisonment, when that person transfers to Gibraltar the Court then has the opportunity, there is an obligation to stick as closely as possible to the sentence of the transferring court but there is this opportunity in section 8 to modify the sentence by lowering it never by raising it, only always by lowering it to the maximum penalty prescribed by the law of Gibraltar for a similar offence. So, inwards transfer of prisoners there is a judicial stage. There is not a judicial stage for the outward transfer of prisoners. The judicial stage is always in the receiving state not in the transferring state. There are provisions that prevent when a prisoner transfers to Gibraltar, he cannot appeal against his conviction, so once he is in Gibraltar he cannot say, "*..well now I appeal to the Court of Appeal against sentence or conviction,* " so there are no rights of appeal attached. This is literally to finish off serving the sentence that one has had. The judicial process in other countries is not reopened.

Then there are what one might call housekeeping provisions in section 12 to give the police power to arrest any transferred prisoner that may escape in Gibraltar and then there is a general rule making power so that the Chief Justice shall have power to make such rules as he thinks fit for the conduct of all Court proceedings in relation to this Ordinance.

Mr Speaker, this is actually quite a welcomed piece of legislation, hon Members will be aware that there have been cases in the recent past where there has just not been the judicial and statutory framework to have pursued it. This creates such a structure at least for countries that have subscribed to the Council of Europe Convention of 1987 so it may still not make it possible with all countries but there is a large list of countries with which it is possible and I think that the House should welcome the opportunity for these transfer of prisoners to be able to take place within a statutory context. I commend the Bill to the House.

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

HON J C PEREZ:

Mr Speaker, we welcome the Ordinance. I think the United Kingdom extended the convention to us but the applications that were received were unable to be processed. As a result one of the things was I think what the Chief Minister mentioned in respect of the Courts of Gibraltar being able to give legal effect to

the detention of the transferring prisoner whereas there are some things that could be done because we were obliged to do it by convention. There were some things omitted in law that could not in effect make this possible and I remember myself that one of the things was that there was no provision for the Court to be able to receive the prisoner and the fact of authorising the Government or the Authority or the Court itself to detain the prisoner in Gibraltar. We welcome the Ordinance, there is just one area that perhaps the Chief Minister might be able to clarify and that is Section 3 (ii) where in respect of countries that are not a Schengen State we are giving ourselves the option of applying the terms of this Ordinance obviously to prisoners transferring out only because we could not extend the terms of the Ordinance to prisoners transferring from another country in another country but I find it rather odd that we should have any other arrangement with any other country other than the ones that we have at the moment, perhaps in the future we might have but I do not see how it is that we might be able to apply that to anything other than to the countries covered by the conventions of which we are applying the law now.

HON J J BOSSANO:

Mr Speaker, there are two points, in the introduction it has been said that we are doing this as a result of Gibraltar being brought in under some of the provisions of Schengen after the United Kingdom decided to join these provisions but in fact if the convention was extended to us in 1987 then presumably we have had irrespective of Schengen and before Schengen even existed we have had the requirement under that convention to accept or give the facility to prisoners and to my knowledge there have been some instances since 1987 where Gibraltarians have been permitted to complete part of their unexpired sentence in Gibraltar and I would like to know what machinery was used for doing that before and I would like to have confirmation that in fact this is not limited to Schengen countries, it applies both to Schengen countries and to convention countries outside the Schengen area and indeed the European Union.

HON CHIEF MINISTER:

Mr Speaker, I will deal with the last point first because it covers some of the points that the Hon Mr Perez touched upon. There are two issues here, there are Convention States and then there are Schengen States and they are different. There are states that have subscribed to the Council of Europe, remember that this is a Council of Europe Convention and therefore there are states that have subscribed to the Council of Europe Convention who are not Schengen States because they are just not on the Schengen Agreement so this extends to Schengen States and to Council of Europe subscribing states that have subscribed to this convention and specifically in answer to the point, I think the position is exactly as the Hon Mr Perez has described. Where it says in Section 3 sub rule (ii) "*where there are international arrangements extended to Gibraltar and applying to a state or territory that is not subject to article 68 of the Schengen Convention....*" I think that that intends to mean other international arrangements, I do not think it means ad hoc arrangements, I think it means the arrangements under some other international base, these will be the mechanics as well, the Government may designate that this order shall give effect to those arrangements as if the state or territory were a Schengen state. I do not think that this is capable of applying to a sort of an informal arrangement between Gibraltar and some other bilateral country with which we happen to find that there is a prisoner as happened in the case that the hon member alluded to. I do not think that this section provides cover to any sort of ad hoc arrangement between Gibraltar and some country in Africa but there would have to be an international arrangement and then they would be covered, provided the country is designated under 3(2) which I could be covered but not the ad hoc situation that we faced with a prisoner in Morocco I think it was in that case. Did the Leader of the Opposition make another point?

HON J J BOSSANO:

The two things that I was asking was since we have had this applicable to us since 1987 irrespective of Schengen……*[HON CHIEF MINISTER:I remember now…….]*……..how have we been doing it since 1987 and how have prisoners been brought home on previous occasions since 1987 of which there have been some instances?

HON CHIEF MINISTER:

I know of one instance and I do not without notice of the question know what the legal basis for that transfer was, I am advised that the convention creates the framework of which one can benefit if one goes on to create the legislation. The UK's agreement for its subscription to parts of the Schengen Acquis created the obligation. This is one of the things that the UK committed to do and therefore there is now an obligation for us to have this arrangement in place.

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 CARRIERS' LIABILITY ORDINANCE 20022

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to supplement the law of Gibraltar relating to the clandestine entry of persons into Gibraltar and matters connected thereto, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the first thing that I would say about this Bill is that it is particularly ineptly titled. The Carriers' Liability Ordinance will suggest to almost any lawyer that sees it liability of carriers' of freight to the owners of the freight, that is what the phrase ' *Carriers' liability'* normally means in the legal profession but this Bill has nothing to do with the liability of '*Carriers of freight'* to the owners or consignees of that freight, this Bill is concerned with creating a regime whereby people who assist or contribute to the clandestine entrance into Gibraltar of unauthorised people and also separately because '*clandestine entry*' means that one gets into Gibraltar hidden but the Bill also applies to a slightly different situation which is not '*clandestine*' as such which is the situation when somebody arrives on a ship or on an aeroplane without the right paperwork. If British Airways carries to Gibraltar a passenger without the right visa to get into Gibraltar that is not an attempt at '*clandestine'* entrance, it is just arriving, seeking to gain

entrance through a proper channel, an immigration point, without the right paperwork and those are basically the two categories of people with whom this Bill deals.

It is another of the measures which are put forward as part of our duties under the Schengen Acquis under article 27 of which the contracting parties undertake to impose the appropriate penalties on any person who for the purpose of gain assist or tries to assist an alien to enter or reside within the territory of one of the contracting parties contrary to the laws of that contracting party on the entry and residence of aliens. The Bill basically creates a system of a fine of, there is the usual definition of terms in section (2) and I note just as I read it that the number (2) has been omitted from page 163, the way it says in this Ordinance all that is section (2) although it does not say so because the next one is section (3) so I shall move that amendment at the Committee Stage. Section (3) creates the liability in principal and hon Members will see section 3(I) says, "*...the person (or persons) responsible for (a) a clandestine entrant; or (b) a passenger arriving in Gibraltar without proper documents, shall, subject to sub-sections (4) and (5) incur a penalty at level (4).*" Level 4 is £2,000 on the scale. Then there is a definition of who is a '*clandestine entrant,*' - *he arrives in Gibraltar concealed in a vehicle, ship or aircraft, he passes, or attempts to pass, through immigration control concealed in a vehicle, or he arrives in Gibraltar on a ship or aircraft, having embarked (1) concealed in a vehicle; (ii) at a time when the ship or aircraft was outside Gibraltar.*" "*Concealed, clandestine*" means concealed trying to gain access through the use of concealment. There is a rather interesting provision for the mitigation of the fine and the mitigation of the fine is on the basis of the schedule in the Ordinance and if the hon Members look in the schedule at page 180 one can see that the starting point is 100 per cent of the fine and then there is all those issues which would allow the competent authority to mitigate and it actually says the percentage mitigation so a reduction of up to 15 per cent or even 25 per cent for voluntary disclosure where there was no fear of early discovery by the authorities. Co-operation, a reduction of up to 20 per cent, gravity, a reduction of up to 30 per cent, that is a novel concept in our legislation where there is a fine imposed and a statutory system of mitigation where the statute actually sets out the principles to be applied in the mitigation and the percentage mitigation that each of the mitigating principles should carry.

There are defences at section 4 subsection (3) there are those statutory defences in the case of clandestine entrants, people who have assisted clandestine entrants in the circumstances set out there have what is called a "*statutory defence*" . He or one of his employees who was responsible for assisting the "*clandestine entrant*" was acting under duress, I do not know what that means, if it means that one's wife was kidnapped at home or he did not know and had no reasonable grounds for suspecting that a "*clandestine entrant*" was or might be concealed in the transporter or that an effective system for preventing the carriage of "*clandestine entrants*" was in operation in relation to that transporter and that on the occasion in question the person or persons responsible for operating that system did so properly. The defences are "*duress, no reasonable grounds of suspecting the clandestine entrant was concealed and had a system in place to prevent this from happening and that system was properly operated on this occasion.*" The Bill goes on to deal with the second category of persons not the concealed person but the person who simply arrives without the proper documentation, again there is a definition of that meaning that one arrives at an airport or port or in a vehicle or bus without the right paperwork. Again there are statutory defences, then the Bill at clause 6 deals with the procedure for imposing a penalty and that is a senior officer which is a public officer to be designated as the sort of administrator of this regime, I suppose that the Government will designate the Principal Immigration Officer. There is a right of appeal against any fine, whoever is the senior officer which is the language used decides to issue a penalty notice and also whether to implement the mitigation of the fine regime. After that has happened the person who gets the fine, whether it is mitigated or not , can then appeal both as to the fine in the first place and as to the extent to which the mitigation regime has

been applied in his favour. That appeal is to the Supreme Court and the Supreme Court has wide powers to replace the finding of the senior officer with its own. Part 4 deals with the powers to detain and in certain circumstances sell the vehicle in which the person arrived and the power of sale is limited to cases where the fine has not been paid provided it is is not subject to an appeal. The person fined can also be charged not just with the amount of the fine but also what the Bill calls connected expenses which are hearing expenses, application expenses and things of that sort and all of that can ultimately be secured by the sale of the vehicle or transporter if it is not paid by the person made responsible which incidentally is not just the owner of the vehicle in question but also people who may be operating the vehicle in question. There is a power to make subsidiary legislation for the purposes set out in section 12 and Part 6 starting at section 14 makes provision for the returnability of unauthorised persons, the ability subject to the asylum regime, the ability to return concealed illegal migrants or undocumented migrants. There are certain amendments made to the Immigration Control Ordinance to render it consistent with this provision including adding a new section in 63 (a) (I) in the Immigration Control Ordinance in the terms set out at clause 15 of the Bill. I commend the Bill to the House.

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

HON J J BOSSANO:

Mr Speaker, we were not aware that this had anything to do with article 27 of the Schengen Agreement and there is no indication that this was an obligation under any Regulation or directive to do with the EEC so we were working on the assumption that this was driven by Government policy……..

HON CHIEF MINISTER:

Will the hon Member give way? I myself queried that and I have asked that when legislation is intended to implement an international obligation it should always say so so that the hon Members can bear that in mind when they are critically looking at the Bill.

HON J J BOSSANO:

The questions that we had in our minds as to what was the purpose and the reasons for doing it of course I will not be pursuing and therefore the points that I want to make are points in relation to some of the sections in the drafting of those sections in relation to the expressed purpose of this.

In terms of the definition of who is a "*clandestine entrant*" in page 166 which is the latter end of section 3 subsection (2) the person arriving in Gibraltar has to either claim or indicate he intends to seek asylum presumably when he is caught or attempts to evade or succeeds in evading immigration control. My reading of that is that if a person in fact arrives on a ship for example and then presents himself to the authorities but does not say he intends to seek asylum then he is not covered by either of those two provisions and none of this applies. That is to say, if a guy steps off a ship being a stowaway and does not seek to evade immigration control he presents himself to the immigration authority and says, "*I am here because I want to live and work in Gibraltar,*" he is neither seeking asylum nor attempting to evade immigration control and therefore he is not a *"clandestine entrant"* and presumably he will have to be dealt with under the Immigration Ordinance and none of the penalties apply to the carrier. I do not know whether that is intended to be like that but

that is how I read it given that we qualify what is "*clandestine*" by laying down two criteria either of which have to be met.

Going back to the latter part of the Ordinance where we are actually amending the Immigration Control Ordinance in the amendment that we are making to section 61 we are removing "*Captain of the Port*" and substituting "*Senior Officer*" but we are doing that not just for the purpose of this Ordinance but for the purpose of the provisions in section 61 in relation to Immigration Control. Section 61 provisions permit the Captain of the Port to detain a vessel where a person has landed in Gibraltar contrary to the provision of the Immigration Control Ordinance which need not be the same provisions as there are in the Ordinance before the House. I cannot understand why it is necessary to remove that power from the Captain of the Port in respect of other offences under Immigration Ordinance and if the Captain of the Port is not going to be the person who has got the authority to detain the vessel then I find it odd that it should be a senior officer who is going to be named under the Carriers' Liability Ordinance although in fact the definition of senior officer that is being provided in that section does not necessarily mean that we are talking about the same person, that is to say, we are providing a new subsection (2) to section 61 of the Immigration Control Ordinance which says, "*a senior officer for the purposes of subsection (1) shall have the same meaning as in the Carriers' Liability Ordinance,*" but it does not mean it has to be the same person. What that section does is it creates the same power for any public officer to be appointed under section 61 (2) of the Immigration Control Ordinance to do the work that until now has been the responsibility of the Captain of the Port because what we are transposing is the definition of what "*senior officer*" means but not necessarily the body.

Mr Speaker, we are also amending section 63 of the Immigration Control Ordinance by adding a new section 63(A) in which we are creating a new offence in anybody in Gibraltar who aides, abets, counsels or procures for a person who is not an EU national to enter or reside within the territory of any country listed from time to time in Schedule 3 contrary to that country's law. That has nothing to do with the purpose of this Bill which is to create a liability for carriers who bring clandestine people into Gibraltar and that seems to me to be a separate policy with separate principles. It would seem to me that on the general principles of this Bill creating an offence in the Immigration Control Ordinance if somebody here advises somebody on how to get into some other country somewhere else in the world has absolutely nothing to do with the purpose for which this Bill is being brought to the House and I do not understand why it is being put there unless I am told that we are also required to do that by article 27 of Schengen but if Gibraltar is required to take action in its own legislation to create an offence in the laws of Gibraltar if anybody here has been involved in assisting anybody anywhere else into entering into another country I would have thought that would only apply to the countries in the European Union, this in fact allows for any country that the Government chooses to be added at any time to the laws of Gibraltar and create the offence here. Those are the points of principle that arise.

HON CHIEF MINISTER:

Mr Speaker, dealing first with that last point I accept that he may not have been focused on them because I was not then reading them for that purpose but the words that I read from article 27 of the Schengen Convention answer his last point. The contracting parties undertake to impose appropriate penalties on any person who for purposes of gain tries to assist an alien to enter or reside within the territory of one of the contracting parties contrary to the laws of that contracting party. It is a sort of matrix system where not only must one's laws create this regime for doing it in one's place but for also from one's place to plan to do it into somebody else. It is to ensure that people cannot sit in one country planning illegal immigrant smuggling operations into other countries as I

suppose happens between Morocco and Spain where all the organisation, planning and all the conspiracy takes place. So, the answer is yes, the terms of article 27 (1) specifically requires us to legislate, remember that the article creates general objectives, this is not like a directive where the legislation closely follows the language. The article does not require us to do this, in particular it requires us to have effective measures dealing with the objectives that I have just described, I suppose that it could have been achieved in many other ways what we have done here is that we have been guided by the UK's own legislation in this respect which is already formulated, tested in the courts and things of that sort but this is not like a directive where the text of the legislation where in a sense has generated itself by virtue of the convention. It is not. The other point that the hon Member has made as to the reasons for amending the Immigration Control Ordinance, the reason for doing it is to ensure that there are no two conflicting legislative provisions covering the same ground. I take the hon Member's point in relation to section 61 because the new legislation does not create a right to arrest a ship. There is a right of detention of any vessel and the power of sale and I suppose a lawyer would say that the right of detention coupled with the right of sale is a lien. That is what a lien is and that this section 61 also deals with powers of arrest, liens on ships and I suppose the draftsman may have wanted to eliminate that but if that was the intention he has failed to do so because by changing the words, "*Captain of the Port*" to "*Senior officer*" by changing the identity of the person that exercises the powers in section 61 of the Immigration Control Ordinance one is not eliminating any alleged conflict or any alleged duplicity. It is arguably worse that one has two different regimes administered by the same person with conflicting provisions. So I will look at this issue before the Bill comes to Committee Stage just to make sure what the Government would wish to do differently in that respect and in relation to the other point I have more or less dealt with half of the other point that he made about the addition of the new section in section 63 of the Bill. The question of the creation of the criminal offence for the offence to be committed somewhere else and then I think that the other point that the Member raised was in relation to the definition of "*clandestine person.*" The hon Member should not forget that the regime applicable to "*clandestine person*" is only applicable to half of this regime there is still the person who arrives without the proper documentation but yes his reading of "*clandestine persons*" is correct. One is a " *clandestine person* " if one arrives in Gibraltar concealed in a vehicle, ship or aircraft, one passes or attempts to pass through Immigration Control concealed in a ship or aircraft or one does not attempt to pass through Immigration Control and having arrived concealed in a vehicle or on a ship obviously having boarded and concealed oneself before the ship arrives in Gibraltar one claims or indicates the intention of seeking asylum in Gibraltar or evade or attempts to evade immigration Control. In those circumstances the person is not a "*clandestine entrant*" for the purpose of section 3 (1)(a) and therefore for the purposes of the Bill. The legislation just does not apply to it.

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 GOVERNMENT FEES AND DUES (REFUNDS) ORDINANCE 2002

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to make provision for the Government to refund sums paid to the Government under certain laws where the House of Assembly, by Resolution, determines it to be in the economic interests of Gibraltar to do so, 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 need for this Bill arises in interesting circumstances. The hon Members will recall that in December of last year we passed a Bill to amend the Supreme Court Ordinance to make new provisions for the payment of fees upon the sale of any ship or cargo by order of the court, to change the Supreme Court fees in order to create a concessionary package for people that arrested many ships. The hon Members may also recall that section 1 of that Bill read, "*This Ordinance may be cited as the Supreme Court Ordinance (Amendment) Ordinance 2001 and shall come into operation upon Her Majesty's pleasure thereon being publicly signified in Gibraltar in accordance with the provisions of section 4 of the Admiralty Court Act 1840.*" That is not anything to do with our local Constitutional set up it is not a reference to the Royal Assent or the Governor's Assent nor is it a reference to the provisions in our Constitution entitled the Secretary of State to disallow legislation, the so called powers of disallowance. The setting of fees in Admiralty jurisdiction in the UK Overseas Territories is regulated by the Admiralty Court Act of 1840 a piece of United Kingdom legislation that applies to everybody and that says under the heading '*Reservation of Colonial Law For Her Majesty's Assent*' this remember is a provision of United Kingdom law, it says, "*.....every colonial law which is made in pursuance of this Act or affects the jurisdiction of all practice or procedure in any court of such possession in respect of the jurisdiction conferred by this Act.....*" that is to say Admiralty jurisdiction, "*....or alters any such colonial law as above in this section mentioned which has been previously passed shall unless previously approved by Her Majesty through a Secretary of State either be reserved for the signification of Her Majesty's Pleasure thereon or contain a suspending clause...*" which is what we put in our clause 1, "*.... providing that such law shall not come into operation until Her Majesty's Pleasure thereon has been publicly signified in the British possession in which it has been passed.*"

This Bill has received the Royal Assent, the Governor's Assent, it had been approved before it was published as a Bill yet legal advisors in London, I think it is in the Lord Chamberlain's department, have advised that Ministers in the UK should not signify Her Majesty's Pleasure under the 1840 Act of the UK because they fear that it would create a precedent in other Overseas Territories who will then wish to start altering. Frankly I find the arguments completely unpersuasive, the local legislation draws on a power contained in the 1840 Act, follows the provisions contained in the 1840 Act, was submitted before it was published and does nothing which in my view not only this House is not entitled to do but actually has done in the way that the English Act of 1840 thinks that it should be done. It can be done by colonial legislatures with the signification of Her Majesty's Pleasure and no one has said to the Gibraltar Government, "*..we do not think that you should modify the ship arrest fees,*" no one

has said, "*...why are you creating a concessionary rate for ships group arrests,"* so that the objection has not been to the substance of the legislation but rather that because the 1840 Act creates a regime for changing shipping rules, procedures and fees throughout all the Overseas Territories that we should not do it by novel method namely an Act of the House Of Assembly. Normally court fees would be changed by the Chief Justice exercising his powers to make fees but the Chief Justice does that in pursuit of the administration of his courts. The Chief Justice is not obliged to exercise his rule making powers because the Government in the wider economic interests of Gibraltar want to attract ships, want to use that area of business for general economic activity and I cannot say to the Chief Justice, "C*hief Justice will you please change the court..."* he may say, "*....yes, it is a very good idea I will I do it,"* or he may say, *"....no."* The Government do not exercise any measure of control over the exercise by the judiciary of its rule making powers through subsidiary legislation. That is why we have brought the Ordinance to the House. This Bill and it has been indicated to me that the Bill that we passed in December, which is the law of Gibraltar in the sense that it received the Royal Assent, will actually not receive in the foreseeable future the signification of Her Majesty's Pleasure under section 4 of the 1840 Act and therefore the provision of section 1 in the Bill when we passed it in December saying it is suspended until it has received the signification of Her Majesty's Pleasure is not imminently forthcoming. In the meantime the Government directly and through the person of the Registrar and the Admiralty Marshal has this commitment to the bank that arrested the ships who bought one under the existing fee structure but bought the others from various corners of the globe after it had been indicated to him that this tariff would be available. I think that Gibraltar is honour bound to deliver on that arrangement to that particular arresting party and this Bill is a means of this House approving such arrangements on a case by case basis without actually modifying the Court Rules. The Court Rules remain the same, whatever the Court fees are, whatever the Chief Justice determines, the Admiralty Marshal's fees are whatever they are under the rules all that money eventually becomes ordinary Government revenue. It goes into the Consolidated Fund like any other and that is the point at which this Bill is designed to deal with the monies. It says and I would not normally take the hon Members through the definition section but the definition sections are key to the operative provisions of this particular Bill so I hope the hon Members will find it helpful that I go through it .

'Resolution' – means a resolution passed by the House of Assembly upon motion presented by the Government upon at least 14 days notice.

'Fees and dues' – means all or part of any sum of money paid with effect from 1st January 2002 by any person by way of fees or dues under the provisions of any law which fees or dues have been transferred into the Consolidated Fund. Actually I am going to do a small amendment to go on to say, "*or are liable to be so paid or transferred."*

'Law' – means any Ordinance, Rule, Regulation or other Law of Gibraltar or Law applicable to Gibraltar, and then we get to the first operative section. The Accountant General shall pay to the payer thereof (without interest) any fees or dues the refund of which has been approved by a Resolution. Remember a Resolution is a Resolution of this House passed on motion of which I have given at least 14 days notice. So, before anything can be refunded it has got to be approved on a case by case basis by a Resolution of this House. That Resolution must declare that it is in the economic interests of Gibraltar to make the refund and must specify the reasons why that is said to be so. If the refund enures to the benefit of an identifiable person or persons they shall be identified in the Resolution by name or names, if on the other hand the refund enures to the benefit of persons engaged in a particular activity then the resolution shall clearly and comprehensively identify and describe that particular activity and the Resolution shall specify the amount of fees or dues to be refunded and once approved by this House in a Resolution that refund constitutes a charge upon the

Consolidated Fund in the year upon which the refund is made not in the year in which it has been paid, in the year in which the House approves it.

Mr Speaker, we have gone as far as we practically and reasonably can to create a regime which does not leave this power to the Government and which would only enable it to be exercised with the maximum amount of prior debate, with the maximum amount of transparency and following a debate and a Resolution of this House which I have purposefully made requiring more than the usual five days notice for Government motions to give the House the maximum opportunity to form a view on what the Government are asking for and the reasons why the Government are asking for and to give the opportunity as much time as possible to examine it critically before it comes to the floor of the House. That is the meaning, extent and indeed the reason why this Bill is before the House and I hope that in the circumstances the hon Member will be able to support it. I commend the bill to the House.

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

HON J J BOSSANO:

Mr Speaker, given that explanation we will of course support it, there was nothing when it went public to indicate why this was necessary at all in the first place. I take it that this means in fact that the people concerned have had to pay the money already and that therefore that money is already in the Consolidated Fund because if it is not then we do not have to take it out. That is what the Bill is for?

HON CHIEF MINISTER:

Mr Speaker, both in this case and in any future application of this legislation the person will have to pay the money because we are not changing the rules as to what the fees are at the front end. We are saying, " *...once you have paid them and after the money has reached the Consolidated Fund, this procedure is then available for a refund."* In the particular case of Renaissance the Admiralty Marshal is holding on to the money, they have to pay 2 per cent under the rules, 1 per cent court poundage, 1 per cent brokers commission and that money is sitting in the Admiralty Marshal's account. I do not think it has yet been passed to the Consolidated Fund which is one of the reasons why I am going to move an amendment. I do not know if the hon Member heard me when I said this under the definition 'Fees and Dues' where it says which fees or dues have been paid or transferred into the Consolidated Fund I was going to add after that, "*.....or are liable to be so paid or transferred."*

HON J J BOSSANO:

Technically the fact that it is sitting in the Admiralty Marshal's means nothing because it is still in the Treasury but in the estimates that were presented to the House at Budget Time we had figures showing the amount collected in the last financial year and the amounts collected or expected to be collected in the current financial year. Does that reflect only the amount once it reaches the consolidated Fund or is that amount already reflecting what is in the Admiralty Marshal's hands?

HON CHIEF MINISTER:

No, the Admiralty Marshal's Account is not the Consolidated Fund. The Admiralty Marshal's Account does not contain Government monies it is a trust account because it also contains proceeds of sale and other things. The Government's share of what is in the Admiralty Marshal's Account will get transferred into the Consolidated Fund at some stage, I do not know when it normally tends to happen, and at that point it becomes Government Revenue into the Consolidated Fund. The answer to the hon Member's question is that when the Financial and Development Secretary proposed changes to the estimates once they were before the House the figure that we then put in was the net figure, the figure that we would hope to keep after we have done this. The hon Member will accept that I am just passing on what has been told to me. The figure for the estimate in the current financial year is a figure which reflects the fact that we were expecting to give this part back it is not the whole amount but the amount that the Government would hope to keep after this had been implemented.

HON J J BOSSANO:

So in looking at the effect of this the resolution would not change that figure because what would eventually appear would be a higher figure coming in and then part of that going out and leaving the same net figure that is there already.

HON CHIEF MINISTER:

Subject to what I have just said being true which of course I will check before I bring any such motion to the House in this case, that would be exactly how it would operate and it is a charge on the Consolidated Fund so that the amount, once the House authorises it in a Resolution to be refunded there is then not an appropriation issue difficulty. There is a legal base for it physically being paid out namely a charge on the Consolidated Fund because the House would not have voted these monies to be paid out in the estimates of that year.

HON J J BOSSANO:

Mr Speaker, on the general principles of the Bill the only thing that seems to us perhaps could have a negative effect on the possibility of attracting this business is that having to go through this procedure may create the impression that the refund is not guaranteed. Given that we are talking about something that is in the economic interests of Gibraltar I appreciate the argument that has been used that this gives the House the opportunity of debating whether it should happen or not happen when the resolution comes. In theory therefore the whole purpose of having 14 days, and time to think about it is that in theory in the debate the whole argument that has been put is that if somebody expects to be paying less than the standard 2 per cent on the basis of the volume of business and that we would not get the business if we did not produce a more attractive fee structure which was what the original Bill did and which we supported because we thought it was a good idea, but if we now have a situation where because of this UK view which does not seem to make any sense we are not going to be able to see the provisions of the Ordinance that have been approved by the House commenced, we now have a situation where people are being told, *".....look you do not have to pay what the law says because there will be a Resolution of the House which will give you a rebate,"* by definition the person can be told that the House will vote *'yes'* even before the Resolution is brought and before the matter is debated and therefore I would have thought that .....

HON CHIEF MINISTER:

Will the hon Member give way? I am grateful to the hon Member, I think he has overlooked because I did not highlight that this would not be on a case by case basis. The motion will not say,"....*and that this should be the regime for the Renaissance ships,"* I am going to bring a motion to the House that says that there should be refunds in every case of arrest and the motion is going to replicate the structure of fees that we approved in the legislation back in December. So that would be a standing motion of the House and a standing instruction to the Accountant General so that in every case that falls within the new structure of incentives that we agreed in the Bill there will be a refund. It is not envisaged that this will be on an arrest by arrest basis, we will be approving in a motion a refund regime for all cases.

HON J J BOSSANO:

Mr Speaker, actually I think he did say on a case by case basis but clearly we thought that the explanation that he had given was that for this specific instance of the Renaissance ships there was going to be one because in fact the law requires that it should say who is the beneficiary and one has got to put the names, now how can one put in a regime the names of the people when we do not know who the people who are going to benefit are. It says, *"....if the refund assures the benefits of persons in a particular activity then the resolution shall clearly and comprehensively describe that particular activity,"* but the beneficiary surely is not the shipowner selling the ship, the beneficiary is the buyer and we have been told that there was a bank that bought it. If we are going to have a comprehensive motion saying, "*banks buying ships,"* well then it would mean that if someone other than a bank buys the ship another shipowner for example, it will not apply, this is why we thought that the Chief Minister was referring to the specific Renaissance sales, the specific amounts and the specific purchaser because the drafting of the Bill says, "*specified the amount of fees or dues,"* and we took that to mean the actual cash not 1 per cent of the fee or 50 per cent of the fee. Obviously we have been focusing it on the reading of the text on the assumption that it would be presented in this House with periodic resolutions whenever there was a need to make a refund and our view would be that that might not be the best way to go about it because it might actually act as a deterrent to the people we are trying to attract to Gibraltar but of course if that is not going to be the case then obviously it is not an issue of principle.

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 FUGITIVE OFFENDERS ORDINANCE 2002

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to make provision for the return of offenders to certain Commonwealth countries, the Republic of Ireland, the United Kingdom and its Overseas Territories, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill actually does not introduce a new regime for the return of fugitive offenders. *'Fugitive Offenders'* is the title given to extradition when it is to a Commonwealth country so it is referred to *'extradition'* to non Commonwealth countries but when it is to a Commonwealth country it is not referred to as *'extradition'* it is referred to as *'return of fugitive offenders'* but it is exactly the same thing that one is doing. This does not introduce any new law, what has happened is that the United Kingdom has inadvertently left Gibraltar with no statutory mechanism for this area of life. The previous regime in exactly the same terms as is set out in this Bill used to be in place under an Order in Council, the Fugitive Offenders Gibraltar Order 1967. Inadvertently the UK revoked the 1967 Order in Council and replaced it with the Extradition Overseas Territories Order 2002 without first ensuring that alternative arrangements were in place and as a stopgap measure whilst more permanent arrangements are put in place as part of the Schengen Acquis. The UK excluded Gibraltar from the new Order in Council because we were going to have to do something differently to the other Overseas Territories because of our Schengen Acquis obligations, they revoked the 1967 Order in Council, replaced it with something else for the other Overseas Territories leaving Gibraltar repealed under the 1967 Order before any new arrangements were in place. In order to fill that gap and make sure that any fugitive offender that Gibraltar may need to send back to the Republic of Ireland, the United Kingdom, a Commonwealth country or any Overseas Territories between now and the date when the new Schengen Acquis related extradition provisions are in place, we have agreed to bring a Gibraltar Ordinance, a Gibraltar Bill, in exactly the same terms as the 1967 Order in Council used to provide for Gibraltar and therefore there is no change in the law. It is returning the law to what it was before the 1967 Order in Council was repealed earlier this year leaving us with no provisions at all. I commend the Bill to the House.

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

HON J J BOSSANO:

Mr Speaker, on the general principles only that it might have been by mistake that this has happened but we welcome being able to do it in this House rather than having it done by Order in Council.

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 BANKRUPTCY (AMENDMENT) ORDINANCE 2002

SECOND READING:

HON K AZOPARDI:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this is a very short Bill and all it does basically is to clarify any issue that may stem from the implementation of the Council Regulation on co-operation in matters of bankruptcy and insolvency. There is already a section in the Bankruptcy Ordinance that talks about Gibraltar Courts being used in assistance to British proceedings in bankruptcy and insolvency, there is a Council Regulation of the year 2000 that extends that principle throughout the EU and these amendments seek to ensure that our law reflects the position as set out in the Council Regulation. 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, Opposition Members will be supporting the Bill but there was one technical issue where we had a query which the Minister might be able to clarify, the Council Regulation 1346/2000 on insolvency proceedings places our relationship with UK courts on the same basis as that of other EC States and it makes the system subject, for example, a UK court to the same conditions as a Spanish court or a court in any other part of the European Community where there is a parallel structure for British possessions for Overseas Territories. The clarification we wanted was in respect to that whether there will now be two parallel structures one for UK and EU together and the other one for British Overseas Territories?

HON K AZOPARDI:

Yes, the amendment would do precisely that. It will substitute the words *'United Kingdom'* for *'European Community'* but then leaves intact a phrase in the Bankruptcy Ordinance that refers to British possessions having jurisdiction in bankruptcy and insolvency and therefore it will allow us to do that and he will have noticed no doubt that there is a specific article in the Council Regulation that refers to the United Kingdom's procedures in relation to Commonwealth courts and bilateral assistance that has been agreed to be left intact and that I think will be left intact also in our domestic law.

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 proposed. Agreed to.

THE CIVIL AIR TERMINAL ORDINANCE (AMENDMENT) ORDINANCE 2002

HON J J HOLLIDAY:

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

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill amends the Civil Air Terminal Ordinance by creating a new offence. This offence is committed by a person who has with him a specific article in Gibraltar Airport or on an aircraft at Gibraltar Airport. The specific articles are firearms or replica firearms, explosives or replica explosives or any other article designed to cause injury. It is made clear that the offence will be committed if an item is in a person's baggage or if that person has caused the item to be in the airport or aircraft even if the circumstances are such that the item would not normally be regarded as being with him. There is an offence, the defence of law authority and of reasonable excuse but it is for the person charged to prove this. The penalty for the new offence is on summary conviction to a fine not exceeding level 5 on the standard scale or imprisonment not exceeding three months or both. On conviction, on indictment the penalty is a fine or imprisonment not exceeding five years or both. The penalty for existing offences under the Civil Air Terminal Ordinance is raised from £25 to level 3 on the standard scale. 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, Opposition Members will be supporting the Bill. The issue of safety is obviously one which this Bill raises and which we obviously back and have no problem with but there is one question which we have in relation to whether this Bill arises as a result of an international obligation or whether it arises simply as a result of local domestic needs because in clause 4 (A) subsection (a) it refers to an aircraft being in flight over Gibraltar which is something that would obviously take an aircraft a matter of seconds so that seems to suggest whether the fact the Bill is a wider obligation which we are complying with and if so we would like to know which one?

HON CHIEF MINISTER:

The question was asked, "...whether there was an obligation?" No it is not it is a request from the Terminal Authority and the Police that there is in fact very poor legislation in Gibraltar relating to the use of imitation weapons in terminals and this legislation responds to that view. It is not an obligation.

HON J J BOSSANO:

In Section 1 subsection (3) which has the new section inserted after 4(A) (1) which makes the offence, it makes it an offence if anybody has a weapon in flight over Gibraltar, what does that have to do with the civil?

HON J J HOLLIDAY:

Mr Speaker, I am advised that it actually makes very little sense in respect of Gibraltar but what we were trying to do was to keep our legislation in line with other legislations on the same issue internationally.

Question put. Agreed to.

The Bill was read a second time.

HON J J HOLLIDAY:

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

Question put. Agreed to.

THE PUBLIC HEALTH (AMENDMENT) ORDINANCE 2002

HON LT COL E M BRITTO:

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

Question put. Agreed to.

SECOND READING

HON LT COL E M BRITTO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the provisions of directives 91/156/EEC on waste and directive 91/689/EEC on hazardous waste were incorporated into the laws of Gibraltar by the creation of Part VA and Schedules 12 and 13 of the Public Health Ordinance. The Bill before the House today provides for amendments which are mostly of a technical nature and which are aimed at ensuring that all the provisions of these two directives are fully implemented. The amendments achieve the following:-

(a) they apply the provisions of Part 5A of the Public Health Ordinance on waste to mineral waste and the commissioned explosives in clause 2 (2). These types of waste had previously been exempted;

(b) by placing an obligation on Government to carry out periodic inspections of certain specified waste activities in sub clauses (3) and (5). Whereas such inspections may

have been carried out in the past there was no specific requirement to do so;

(c) the existing requirement for registration of those who collect waste on a professional basis is now extended to those who transport waste on a professional basis in sub clause (4);

(d) clarifying that a person who recovers or disposes of waste himself does not commit the offence of using an unregistered waste collector in sub clause (6);

(e) by expanding the definition of *'hazardous waste'* in sub clause (7);

(f) by prohibiting the mixing of different categories of hazardous waste in sub clause (8);

(g) by requiring the keeping of records of hazardous waste and making of these records available on request to the previous holder of the waste in sub clauses (9) and (10);

and finally by revising the list of waste disposals and recovery operations in sub clause (12) by substituting new schedules (12) and (13) for the existing schedules. I commend the Bill to the House.

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

HON DR R G VALARINO:

Mr Speaker, as the Minister has said this Ordinance is to amend the Public Health Ordinance so that certain EEC directives are complied with. The principal changes in sections 192B to 192L are noted together with minor changes in schedules 12 and 13. The Opposition Members will be supporting the Bill.

Question put. Agreed to.

The Bill was read a second time.

HON LT COL E M BRITTO:

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

Question put. Agreed to.

THE LANDFILL ORDINANCE 2002

HON LT COL E M BRITTO:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar provisions of Council Directive

1999/31/EC of the 26th April 1999 on the landfill of waste, be read a first time.

Question put. Agreed to.

SECOND READING

HON LT COL E M BRITTO:

I have the honour to move that the Bill be now read second time. Mr Speaker, this Ordinance implements the requirements of EC Directive 1999/31/EC on the landfill of waste and is better known as The Landfill Directive. The directive aims to tackle emissions of methane gas emitted from landfill sites by limiting the amount of biodegradable waste going to landfill. It also aims to encourage the prevention, recycling and recovery of waste by limiting its final disposal through landfill. Another aim of this directive is to safeguard the health of people and the environment by harmonising controls on the landfill of waste throughout the European Union and ensuring the proper licensing, monitoring and common standards of design operation and aftercare of landfill sites. Although there are no landfill sites in Gibraltar and there is presently no Government intention to create any it has been considered that the directive should be transposed into our legislation to ensure that should there ever be any landfill site in the future these are properly regulated. The Ordinance prohibits the operation of a landfill except under a permit granted by the Regulator, in this case the Environmental Agency, it also specifies the information which needs to be provided when applying for such a permit and the contents and conditions to be imposed on such permits. Section (4) classifies landfills in one of three ways, namely those for hazardous waste, those for non-hazardous waste and those for inert waste. Section (5) prohibits the acceptance of the following waste at landfills, liquid waste, waste which is explosive, corrosive, oxidising or flammable, infectious clinical waste, whole tyres as from next year and shredded tyres as from the year 2006 except large tyres and bicycle tyres and any other waste which does not fulfil the acceptance criteria set out in schedule (1). The remaining sections deal with waste acceptance criteria, closure and aftercare procedure, national strategy and charges. I commend the Bill to the House.

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

HON DR R G VALARINO:

Mr Speaker, Opposition Members will be supporting this Bill. It basically deals with EEC Directives on the pollution control regime on the landfill of waste in Gibraltar. Schedule (1) and (2) are specifically important as it sets out the criteria for the acceptance of waste and the general requirements for all classes of landfills. This is an important Bill and we will be monitoring Government as to its implementation.

On the subject of municipal waste do Government intend to carry out the present practice of using Spain given the possibility that the current practice may well come to a halt with continuing harassment from our neighbours?

HON J C PEREZ:

Mr Speaker, might the Minister perhaps find out before the Committee Stage whether the question of the disposal of construction rubble does constitute a landfill site given that he has just said in bending the principles of the Bill that there are no landfill sites in Gibraltar at the moment, could he perhaps check

where we are disposing of construction rubble and how this is done and whether that falls into any of the definitions that the Ordinance is at the moment passing and certainly what is the future for such landfill sites? I would really appreciate it if the Minister could check before the Committee Stage.

HON LT COL E M BRITTO:

Mr Speaker, in reply to the hon Member's question about future Government policy the Government policy is to re-establish incineration as a primary means of disposal of waste in Gibraltar and therefore it is not the intention to carry on using landfill in Spain forever and ever.

In reply to the second question by the Hon Mr Perez, I can give him the answer now because I had already checked this and I had asked myself the same question. The disposal of building rubble on the Eastern side of the Rock is not considered a landfill operation and does not come under the definitions of this Ordinance and is not covered by this Ordinance at all.

Question put. Agreed to.

The Bill was read a second time.

HON LT COL E M BRITTO:

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

Question put. Agreed to.

THE SOLVENT EMISSIONS ORDINANCE 2002

HON LT COL E M BRITTO:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar the provisions of Council Directive 1999/13/EC on the limitation of the emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations, be read a first time.

Question put. Agreed to.

SECOND READING

HON LT COL E M BRITTO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Ordinance transposes into our laws the provisions of Council Directive 1999/13/EC on the limitations of the emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations. Organic solvents are chemicals commonly used in paints, inks, and adhesives, their function is to facilitate the application of a film of paint, ink or adhesive onto a surface after which they evaporate to leave a decorated, printed or adhered finish. Solvents are also used extensively to clean surfaces prior to coating and for dry cleaning of clothing and furnishings. They also have other specialist applications such as the extraction of vegetable oil from seeds which are not applicable to Gibraltar. Due to their volatility

organic compounds are emitted into the air when used in many industrial processes. A number of these organic compounds are directly harmful to human health or to the environment, for instance, having the potential to cause cancer, cell mutation or effects on reproduction. Moreover many solvents undergo chemical reactions in the atmosphere which cause a number of indirect effects such as the formation of ozone. Elevated concentrations of ozone in air can impair human health and can damage some building materials, forests, vegetation and crops. A distinction must be drawn however between ozone at this low level which is addressed by the present directive and this proposed legislation and also against ozone at a high level which forms a protective layer around the earth to shield it from the ultra-violet radiation. The purpose of this Ordinance therefore is to prevent or reduce the direct and indirect effect of emissions of volatile organic compounds into the environment, mainly into air, and the potential risks to human health as a result of the use of organic solvents in certain activities. These activities are those defined in schedule (1) of the Ordinance when carried out above the threshold levels listed in schedule (2). Any new installations falling within this definition will require prior authorisation from the Environmental Agency. Existing installations will require an authorisation by the 31st October 2007 thereby allowing them time in which to comply. Applications for authorisation must show compliance with the requirements of the Ordinance and specifically with schedule (3) which relates to the control of emissions, substitution of certain substances by less harmful ones, and emission limit values. Installations covered by the Ordinance must provide monitoring data to the Environmental Agency once a year or on request showing compliance with the Ordinance. The Agency has powers to inspect an installation, take samples and gather information to ensure compliance. It also has a duty to make information available to the European Commission and the public. I commend the Bill to the House.

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

HON DR R G VALARINO:

Mr Speaker, this is an Ordinance to transpose into the law of Gibraltar the provisions of Council Directive on the limitations of the emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations. These are set out in schedule (1). Many are not relevant to Gibraltar but some may be such as those concerned with cars, vans, other vehicles, dry cleaning and printing. This is another area of community action to concentrate inter alia on the implementation of appropriate standards to ensure a high level of public health and environmental protection. We welcome this Bill and we will be voting in favour.

HON LT COL E M BRITTO:

Mr Speaker, just briefly to thank the hon Member for his indication of support and in answer to his implied question although there are many activities which are included in schedule (1) which take place in Gibraltar, I am advised that it is only dry cleaning that will be directly affected by this legislation because it is the only activity that comes within the thresholds in schedule (2). The key sentence in the Bill is the second sentence in schedule (1) which says that the activity has to be operated above the threshold level and only dry cleaning is affected.

Question put. Agreed to.

The Bill was read a second time.

HON LT COL E M BRITTO:

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

Question put. Agreed to.

THE FOSTERING ORDINANCE 2002

HON MRS Y DEL AGUA:

I have the honour to move that a Bill for an Ordinance to provide for the fostering of children, be read a first time.

Question put. Agreed to.

SECOND READING

HON MRS Y DEL AGUA:

I have the honour to move that the bill be now read a second time. Mr Speaker, the purpose of this Bill is to provide a legal framework for fostering children and young persons in Gibraltar. Although a pilot fostering scheme has been up and running for the past 18 months it has been done on an entirely informal basis with no statutory back-up. This piece of legislation will provide that back-up and without creating a straight jacket for the system will formalise it to some extent. Firstly a child must be identified as being in need of care. Normally the parent or other carer will have an opportunity to be heard in court although section 4(4) permits an emergency application to be made if the child is in immediate need of care or if the Chief Executive of the Social Services Agency considers that the child might be harmed if notice of the application is given.

Once the child is declared to be in need of care the Chief Executive must keep a register of such children and may place them with persons he has identified as suitable foster carers. He may also provide for maintenance to be paid in respect of the child. If the court makes an order for a specific period of time the Chief Executive may apply for an extension, likewise the parents can ask the court for the return of the child if the circumstances have changed. Any private fostering arrangements must be notified to the Chief Executive who will keep them under review. Finally, the Minister may make regulations under the Ordinance as may be necessary to ensure it works properly.

Mr Speaker, I have already given notice in writing that I will be making several amendments to the Bill at Committee Stage. I commend the Bill to the House.

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

HON J L BALDACHINO:

Mr Speaker, we shall be supporting the Bill, as a matter of fact we believe that it is better for children to be placed in fostering care rather than in institutions like a home, it creates a more family affair even though fostering in other countries has had certain problems with the people that have taken over children under their care. I think in Gibraltar that will not happen because

we know each other and therefore it is easy to identify who can foster children and those who cannot.

There are certain things that the Minister maybe in her reply could clarify, on the question of private fostering, does fostering have the same meaning in 6(1) as what it has in the Ordinance in (2). Is it exactly the same meaning there because if it is not for example, in (1) it says, "*fostering means looking after a child in need of care by a person* " after she has amended (a) "*by a person who is not a parent , adoptive parent, relative, or who otherwise has potential responsibility in respect of a child.*" I wonder if 6(1) fostering there means exactly the same because it says, "*..if under an arrangement made by the parents or other person or persons having parental responsibility for the child, that child is being looked after by another person or persons where for reward or otherwise, that person or persons shall notify the Director, in this case the Chief Executive who shall keep the arrangement under review.*" Maybe the Minister can clarify if it means the same thing because otherwise relatives will have to notify the Chief Executive in 6(1) if it is not the case that the meaning is exactly the same.

Mr Speaker, I would like to notify the Minister to make a slight amendment in clause (3) (a), the first word "*may*" if it could be substituted for "*shall*" unless there is a reason why "*may*" is there, in other words "*shall safeguard and promote the interests of the child in need of care.*" As I have said we will be supporting the Bill, we think it is better for children to be fostered rather than be institutionalised.

HON CHIEF MINISTER:

Mr Speaker, by chance the hon Member has touched on two of the points that I have shown an interest in relation to this Bill. When I first read 6 (1) I was moved to ask , "……. does that mean that when I send my children for the weekend to my sister's ……" I am told that it does not because the phrase "*looking after a child,*" as it is defined in section (2) means caring for that child as if he were part of the family on a continuous basis but does not include occasional visits to family or friends but if I make an arrangement with my sister by which she continuously looks after my child other than on that occasional basis then that is an arrangement that has to be registered. In other words, the Social Services Agency wants to know which children are being looked after continuously other than by their natural parents or persons with lawful custody. My understanding of the specific question that he posed is that the definition of that is wider than the definition of fostering for the purposes of fostering, although it uses the word "*fostering*" in the title that is not part of the operative section, the operative part of the section does not use the word "*fostering*" at all so my understanding of it is that if under an arrangement made by the parents or persons who have parental responsibility for the child that child is being looked after, "*looked after*" is a defined term, but that could easily catch arrangements which are not "*fostering*" within the strict definition of the word "*fostering*" and that is the point that the hon Member was trying to raise and I think that it is absolutely right but that is a different definition. As to his proposed amendment this is also an issue that has given rise to some internal discussion. This is not a comprehensive Children's Act, I think that it is probably high time that Gibraltar generally revisited its Children Legislation generally and that we thought in terms of a Children's Act. This Bill is not intended to do that, this Bill is intended to create a legal framework for the fostering policy that we unveiled last year. It is not intended as a comprehensive review of Child Protection Legislation in Gibraltar because before we did that, before we could have a comprehensive Children's Act we would have to make sure that we had the staff, resources, expertise, manpower available to do that and that is the reason why we use "*may*" and not "*shall*" in fact "*shall*" did feature in an early draft of this Bill but we removed it because we did not think that we could just take on that. If we use the word "*shall*" there is an obligation, it is mandatory and frankly the administration needs to look more closely at its resources before we can assume a statutory

obligation to do all of this. So this Bill is limited in its scope to simply providing legal cover for the sort of fostering scheme that has been, the fostering scheme is a useful first step in a more modern approach to child protection in Gibraltar but certainly we do not believe that it is the end of the road. I think that we do need to have a comprehensive Children's Act and that as part of that comprehensive Children's Act the public administration needs to look at its resources, its manpower and its expertise and only when we have reached that position can the public administration safely and in the context of that initiative can the public administration safely accept a statutory obligation to do things because otherwise we would be accepting the statutory obligation before we have equipped ourselves with the wherewithal to actually satisfy it.

HON J J BOSSANO:

Mr Speaker, we note the argument that has been used but our concern was that we appear to be passing a law that leaves it at the discretion of the person concerned whether he chooses to safeguard the interests of the child in need of care.

HON CHIEF MINISTER:

Much better than it has been for the last 40 years.

HON J J BOSSANO:

That might be so because before we had no provision and the law was silent but now we have a law that says, " .....children in need of care should have their interests safeguarded," then surely it must be an obligation to safeguard it. I cannot imagine the Chief Executive saying, "Well in this case I am going to safeguard it for this child but in the other one I am not going to do it because I choose not to do it..." We are creating a discretion between one child and another which I would say goes against the very principle of what the House is trying to do with the Bill which is to create a statutory responsibility to do something about children in need of care. We have not questioned the fact that there is discretion in all the other areas whether they identify or they do not identify, whether they prescribe or they do not prescribe, whether they place the child or they do not place the child but whether they safeguard or they do not safeguard the interests of the child is the only one we thought that really creates an unusual, almost a contradiction in what the purpose of the Bill is.

HON S E LINARES:

Mr Speaker, what my Colleague said on private fostering, could the Minister consider whether in the terminology, in the way that it is written down, children sent to boarding schools have to be registered with the Chief Executive, because it is not clear?

HON MRS Y DEL AGUA:

Mr Speaker, in reply to the hon Member's last point these arrangements only apply to children in Gibraltar not children who are sent abroad for whatever reason. In relation to the point that the Leader of the Opposition has made about "*may*" and "*shall safeguard the interests of the child..*" as it relates to this piece of legislation relating to fostering, as the Chief Minister has already explained, we have the discretion, when the Children's Act is finally implemented it will be a different matter because it is more extensive and covers the whole range of children in care.

Question put. Agreed to.

The Bill was read a second time.

HON MRS Y DEL AGUA:

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

Question put. Agreed to.

The House recessed at 1.05 pm.

The House resumed at 3.00 pm.

COMMITTEE STAGE

HON ATTORNEY GENERAL:

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

(1) The Supreme Court Ordinance (Amendment) Bill 2002;

(2) The Transfer of Sentenced Persons Bill 2002;

(3) The Carriers' Liability Bill 2002;

(4) The Government's Fees and Dues (Refunds) Bill 2002;

(5) The Fugitive Offenders Bill 2002;

(6) The Civil Air Terminal Ordinance (Amendment) Bill 2002;

(7) The Public Health (Amendment) 2002;

(8) The Landfill Bill 2002;

(9) The Solvent Emissions Bill 2002;

(10) The Fostering Bill 2002.

THE SUPREME COURT ORDINANCE (AMENDMENT) BILL 2002

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

Clause 2

HON CHIEF MINISTER:

In the definition of "*Competent Authority*" place a fullstop after the words "*Chief Justice*" insert a semi-colon and delete all the words appearing thereafter.

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 TRANSFER OF SENTENCED PERSONS BILL 2002

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

Clause 2

HON CHIEF MINISTER:

Mr Chairman, I notice that on page 153 in section 8 (2) there is a reference there to *"the Minister"* which is not part of the framework of this Bill, there is no other reference to the Minister and the Minister is not defined. I think that should be a reference to *"the Government "* which is what the rest of the Bill refers to, so I propose to delete the word *"Minister"* and substitute it with the word *"Government."*

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

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

Clause 6

HON J J BOSSANO:

In subsection (5) we should delete the word *"he"* and insert *"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.

Clause 8

HON CHIEF MINISTER:

In subsection (2) delete the word *"Minister"* in the fourth line and insert *"Government".*

Clause 8 - as amended, was agreed to and stood part of the Bill.

Clauses 9 to 12 - were agreed to and stood part of the Bill.

Clause 13

HON CHIEF MINISTER:

Mr Chairman, I move the amendment where there is the omission that I mentioned this morning at page 158, section 13, *"...the Chief Justice shall have the power to make such rules as he thinks fit."* The word *"he"* has been omitted in front of the word *"thinks"* and I propose that we introduce the word *"he"* otherwise it does not make sense.

Clause 13 - as amended, was agreed to and stood part of the Bill.

Clause 14 - was agreed to and stood part of the Bill.

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

THE CARRIERS' LIABILITY BILL 2002

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

Clause 2

HON CHIEF MINISTER:

Immediately in front of the word in where it says *"in this Ordinance"* there should be a 2, full stop, so underneath the heading *"Interpretation"* just in front of the words *"...in this Ordinance.."* there should be the figure 2, full stop.

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

Clause 3

HON J J BOSSANO:

Mr Chairman, in clause 3, I raised under the general principles and the Government confirmed that the interpretation was that the liability did not apply to any other form of illegal immigration.

HON CHIEF MINISTER:

I had this looked into and the drafting is as it should be. There are three scenarios. Scenario 'C' caters for the case where he arrives concealed but reveals himself before attempting entry.

HON J J BOSSANO:

And in that case there is no offence and non of the penalties apply?

HON CHIEF MINISTER:

There may be other offences maybe in other places.....

HON J J BOSSANO:

.....but then in the provision that we are making in 63 (A) we are not limiting the offence in that case to what we are providing in this Ordinance because there it simply says, "*...a person who gains, aids, abets, counsels or procures any person not being a national of a Member State to enter or reside within the territory of any other country...*" so in fact.....

HON CHIEF MINISTER:

That is in a different Ordinance.

HON J J BOSSANO:

It seems peculiar to me that we should be in this legislation creating an offence if somebody counsels a non-EEC national to enter and reside in another territory even though it may not come under the clandestine immigrant definition and yet it is a crime for anybody here to advise anyone to enter into another Member State but not presumably to enter this Member State because in this law we are saying that one only commits an offence if one is involved in providing the vehicle in which a person enters

Gibraltar and does not disclose his presence or if he discloses his presence he asks for political asylum. The other part seems to be any form of illegal immigration like what happens as a regular thing across the straits where people are not asking for asylum.

HON CHIEF MINISTER:

Mr Chairman, that is the intention, this has got to be read disjunctively as I have been told over the lunch-break, that it caters for a number of scenarios. A person arrives "*clandestinely*" in the circumstances separately described in 'A', 'B', and 'C'.

'C' – is when one arrives in Gibraltar on a ship or aircraft having embarked the ship or aircraft, obviously elsewhere, concealed in a vehicle and at a time when the ship or aircraft was outside of Gibraltar. One can do that and then claim or indicate that he intends to seek asylum in Gibraltar or evades or attempts to evade immigration control, those are people who are "*clandestine*" entrants. I am having some difficulty grasping why the Leader of the Opposition thinks that there is a gap here.

HON J J BOSSANO:

Mr Chairman, we have got a provision in the law here and the law is dealing with the liability of the carrier for "*carried clandestine entrants*" and yet we are making a provision in 63 as an amendment to the Immigration Control Ordinance which creates an offence even where the person being advised to enter another Member State is not a "*clandestine entrant.*"

HON CHIEF MINISTER:

No. This is what I do not see.

HON J J BOSSANO:

Yes because it is an offence to counsel any person to enter or reside within the territory of any country listed from time to time in schedule 3 contrary to that country's law on entry and residence, nothing to do with being a "*clandestine entrant*".

HON CHIEF MINISTER:

Yes. This is a separate section that deals with the infrastructure of those who organise illegal immigration. The hon Member has noticed that this is not the offence creating section in the Carriers' Liability Ordinance, this is a separate offence separately inserted in the Immigration Control Ordinance.

HON J J BOSSANO:

Yes that is the whole point that if we are amending the Immigration Control Ordinance with this what we are in fact saying is that in the case of entering into any other Member State people in Gibraltar who have got any connection with that entry are committing an offence under the Immigration Ordinance and there is a penalty but those are not offences under the Carriers' Liability Ordinance even though we are sticking it in the Carriers' Liability Ordinance.

HON CHIEF MINISTER:

They may or may not be altered.

HON J J BOSSANO:

They are not necessarily so.

HON CHIEF MINISTER:

They may or may not alter the offences under the Carriers' Liability Ordinance but this is wider, this is the point that he is making.

HON J J BOSSANO:

That is the point that I am making so we have a wider definition in respect of the obligation of people in Gibraltar for advising somebody to do something in another Member State that we have about people doing it here because another Member State presumably with a similar provision would only have to do that in respect of our own laws because we are doing it in relation to other people's laws.

HON CHIEF MINISTER:

There are two different things. One thing is the offence one commits in Gibraltar in relation to the breach of Gibraltar's own entry laws and that is not just in the Carriers' Liability Ordinance but also there are things in the Immigration Control Ordinance about people who try to get into Gibraltar in breach of the Ordinance. This section is not about that this is a general section which delivers that part of the Schengen thing that I read to him this morning from article 27 which provides a matrix in every country so that one can be tried for example, for conspiracy in Gibraltar, for planning in Gibraltar the breach of immigration laws in another country and therefore it is a different offence, wider, not necessarily limited to what the Carriers' Liability Ordinance will say and do about offences under that particular Ordinance. I suppose there may be countries whose laws are wider than the Carriers' Liability Ordinance and therefore this section will allow the prosecution in Gibraltar of people who aid and abet, procure, et cetera breach of those laws even if those laws are tougher than ours.

HON J J BOSSANO:

So, under the Schengen matrix of article 27 as long as it is not done for profit it is not an offence to aid, abet, counsel or procure any person to break the laws of another Member State?

HON CHIEF MINISTER:

Apparently not.

Clause 3 - was agreed to and stood part of the Bill.

Clauses 4 to 14 - were agreed to and stood part of the Bill.

Clause 15

HON CHIEF MINISTER:

Mr Chairman, having considered the views expressed by the Leader of the Opposition I am driven to agree with him and therefore I move that subsections (b), (c) and (d) be deleted from this Bill so that the Immigration Control Ordinance is not amended in the ways set out in (b), (c) and (d); also delete the comma after the word '*who*' in the first line of section 63A (1).

Clause 15 - as amended, was agreed to and stood part of the Bill.

The Schedule and the Long Title - were agreed to and stood part of the Bill.

THE GOVERNMENT FEES AND DUES (REFUNDS) BILL 2002

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

Clause 2

HON CHIEF MINISTER:

Mr Chairman, I have given written notice of this point, it should not be "*.....last 14 days....*" It should be "*...least 14 days....*" In the definition of resolution.

MR SPEAKER:

"*At least.*"

HON CHIEF MINISTER:

And in the definition of '*fees and dues*' I would like to add after the word '*fund*' ' *...or are liable to be so paid or transferred....*"

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

Clause 3

HON CHIEF MINISTER:

Mr Chairman, I have not given notice of this resolution but I think it is probably correct given that it is going to be a charge on the Consolidated Fund that the monies should actually have gone into the Consolidated Fund before they are repaid out and that can be achieved just by adding after where it says, "... *any fees or dues...,*" the words "*...paid into the Consolidated Fund...*" in subsection (1). That would read, "*...the Accountant General shall pay to the payer thereof without interest any fees or dues after they have been paid into the Consolidated and the refund of which has been approved by the resolution.....*" it is just to get the chronology right that the Consolidated Fund should not be charged with any refund before it has received the revenue. The money has actually got to come in from, for example, the Admiralty Marshal's Account into the Consolidated Fund before it could be physically paid out.

HON J J BOSSANO:

That is only necessary because of the amendment that has just been moved to change the definitions of *'fees and dues.'* As the original Bill was drafted, given that *'fees and dues'* was any sum of money paid into the Consolidated Fund by definition *'fees and dues'* in (3) was money that had been paid or transferred. Since we have now said, " *..or due to be paid..."* we are.....

HON CHIEF MINISTER:

Yes. That is true but what I am trying to say is that I am trying to draw a distinction between the definition of the *'fees and dues'* for the purpose of defining what *'fees and dues'* are captured by this whole regime then it is either *'paid or liable to be transferred'* and drawing a distinction between that on the one hand which I suppose identifies the entitled area and the actual physical payment out. I hear what the Leader of the Opposition is saying and I think that he is right but I still think that there is a version not withstanding that into having a difference between the definition of the fees and dues for the purposes of just being covered by this regime and then separately dealing with the question of the actual payout which cannot happen before the money is in the Consolidated Fund. For example, I could bring a motion before the money has actually gone into the Consolidated Fund but then the motion could not be consummated until the money has come into the Consolidated Fund. That is what I am trying to achieve by this apparent contradiction.

HON J J BOSSANO:

Surely in the resolution in the motion in the House the text of the motion could say, *"when the money is received in the Consolidated Fund.."* the other thing is in terms of the amendment that has just been moved to the fees and dues where it says, " *or liable to be paid* " is it possible that there can be a difference between the amount that the party pays to the Admiralty Marshal and the amount that is transferred subsequently?

HON CHIEF MINISTER:

No. That is not what the word *"liable"* is intended to signify there. The answer is no to that.

HON J J BOSSANO:

All of it goes into the Consolidated Fund?

HON CHIEF MINISTER:

Absolutely. Everything that is Government revenue has got to go to the consolidated Fund, *"liable"* is intended to mean ' *due to be paid.'* Although these are raised as court poundage in the case of ship arrests this is raised by the courts as court poundage but it is *"liable"* to be paid by the courts into the Consolidated Fund. The courts cannot say, " we will keep this as a sort of court fund of some sort." This is Government revenue transferable into the Consolidated Fund by the Collector which happens to be the Admiralty Marshal not even the Supreme Court.

HON J J BOSSANO:

But when we were talking about the general principles we were told that in fact when I asked whether the money had gone into the Consolidated Fund, we were told that it was in trust.

HON CHIEF MINISTER:

Yes I remember using the word 'trust'.

HON J J BOSSANO:

But if it is in 'trust' it is not in the Consolidated Fund.

HON CHIEF MINISTER:

No exactly so.

HON J J BOSSANO:

But is the amount in trust bound to be transferred in whole or can they use that money for something else and transfer the balance?

HON CHIEF MINISTER:

No. Let me explain to the hon Member how the Admiralty Marshal's account works. This is not even a Supreme Court Account this is an Admiralty Marshal's account. The Admiralty Marshal when the ship is arrested opens a bank account in her name subtitled 'that ship.' There are expenses that she has to meet, ship keepers, food for the crew that sort of thing that the hon Member remembers dealing with and that is usually financed by the arresting party who is required to make an advance to the Admiralty Marshal, that goes into the Admiralty Marshal's account. So there is money in from the arresting party and then there is money out for ship chandlers and all the people that these services are bought in from. Then the ship is sold by the Admiralty Marshal when the Court eventually orders it. The buyer first pays his deposit into the Admiralty Marshal's account, then after 30 days they have to pay the other 90 per cent of the sale price of the ship. All that goes into the Admiralty Marshal's account and then the Court orders the distribution of the monies in the Admiralty Marshal's account. The Government charges 1 per cent, the shipbroker that sold the ship for the Admiralty Marshal also charges 1 per cent and those are first calls on the money. Then there are a series of priorities, crew claims come first, she pays those out and eventually she gives the balance whatever is left provided it is not more than their claim to the arresting party. In the unlikely event that there is anything left over it goes to the owner of the ship. The Admiralty Marshal's account is a clearing account where all the financial transactions relating to that ship pass. The Government are just one of many recipients of money that the law entitles the Government to receive this one per cent court poundage.

HON S E LINARES:

Mr Chairman, in 3(1) there is the word "*therefore*" rather than "*thereof*" I think it is a typographical error.

HON CHIEF MINISTER:

Yes, the hon Member is absolutely right it should read, "*thereof,*" not "*therefore*" I am grateful to the hon Member.

HON CHIEF MINISTER:

There is one small typographical error in (3) (3) where it just says, "*...person or persons the shall be identified...*" delete the word "*the*" and substitute in its place the word "*these*" so that it

will read, "... *if the refund enures to the benefit of an identifiable person or persons these shall be identified."*

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

Clause 4 – was agreed to and stood part of the Bill.

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

THE FUGITIVE OFFENDERS BILL 2002

Clauses 1 to 16 - were agreed to and stood part of the Bill.

Clause 17

HON CHIEF MINISTER:

Mr Chairman, for some reason it moves from 16 to 20, 21, 22, so I move that we amend 20, 21, 22 to read "*17, 18, and 19"* respectively.

Clause 17 - as amended, was agreed to and stood part of the Bill.

Clauses 18 and 19 - were agreed to and stood part of the Bill.

The Schedule and The Long Title - were agreed to and stood part of the Bill.

THE CIVIL AIR TERMINAL ORDINANCE (AMENDMENT) BILL 2002

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

Clause 2

HON DR J J GARCIA:

One point in clause 2 (4) we are amending section 5 of the existing Ordinance by substituting the words "*to a fine of £25"* with words " *a fine not exceeding level 3 on the standard scale,"* if we take away the word "*to"* then the amended Ordinance will not make sense. If we take away the word "*to"* as section 4 of the Bill does then the Ordinance we are amending will not make sense because it reads, "*..by substituting for the words to a fine of £25 the words a fine not exceeding level 3 on the standard scale,"* we need to leave "*to"* in so that it says "*...to a fine not exceeding level 3 on the standard scale,"* .

HON CHIEF MINISTER:

How does the original section read?

HON DR J J GARCIA:

This one reads, " *... a person who contravenes any of the provisions..."* and then it carries on, "*.....and the authority of this Ordinance or those Regulations is guilty of an offence and is liable in summary conviction to a fine of £25."* If we take away the word "*to"* then it will say," *.....summary conviction a fine not exceeding level 3."*

HON CHIEF MINISTER:

So do not delete the word "*to"* from the amending section.

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

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

THE PUBLIC HEALTH (AMENDMENT) BILL 2002

Clause 1

HON LT COL E M BRITTO:

Mr Chairman, just a small amendment which I had given written notice in clause 1 after the word Minister insert the words "*..for the Environment..."*

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

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

The Schedule and the Long Title - were agreed to and stood part of the Bill.

THE LANDFILL BILL 2002

Clause 1

HON LT COL E M BRITTO:

I wish to move the following amendment:
After the word "*Minister"* add the words "*for the Environment."*

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

Clauses 2 to 17, the Schedules and the Long Title - were agreed to and stood part of the Bill.

THE SOLVENT EMISSIONS BILL 2002

Clause 1

HON LT COL E M BRITTO:

Mr Chairman, once again the same point after the word *"Minister"* insert the words *"for the Environment."* Obviously the year is wrong it should be 2002.

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

Clauses 2 to 15, the Schedules and the Long Title – were agreed to and stood part of the Bill.

THE FOSTERING BILL 2002

Clause 1

HON MRS Y DEL AGUA:

Mr Chairman, I would like to move that after the word *"Minister"* add the words *"for Social Affairs."*

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

HON S E LINARES:

In the definition of the Minister it says, *"Social Services,"* is it the Minister for Social Affairs or Social Services?

HON CHIEF MINISTER:

This is a perennial question, the title of the Minister is 'The Minister for Social Affairs' whose responsibilities include Social Services. For example, the Minister for Tourism and Transport is his title but he has responsibility for the Port so sometimes it says Minister with responsibility for the Port but at least on the face of the one Bill we should be consistent and refer to by the same title in both places. One is the name of the title of the Minister and the other is the particular portfolio which is relevant to the bid in question.

Clause 2

HON MRS Y DEL AGUA:

Mr Chairman, I have already given written notice that I would be moving some amendments. Delete the word *"Director"* and insert the words *"Chief Executive "* wherever this appears in the Bill. I do not know whether I have to specify exactly where when each clause comes up or just this general comment will suffice.

In addition there is a typographical error in paragraph 2 line 1, the word *"Direct"* which assumedly was *"Director"* should also be changed for the words *"Chief Executive"* and under the definition of *"fostering"* the word *"a"* should be inserted after the word *"by"* and before the word *"person"* to read *"fostering means looking after a child in need of care by a person who is not a parent et cetera..."*

HON J J BOSSANO:

Mr Chairman, in the definition of *"Director"* that has just been changed is the position then that somebody can be appointed as Chief Executive and yet in theory the law allows someone else to be given the responsibility for administering the Ordinance and then that other person would be the Chief Executive and there would be two Chief Executives.

HON CHIEF MINISTER:

Which section?

HON J J BOSSANO:

If we have somebody who is the Chief Executive of the Social Services Agency under that Ordinance which is a statutory body and someone is appointed to that post and we are now removing the word *"Director"* here and saying, *"....the person responsible for carrying out the provisions of this Ordinance is the Chief Executive,"* appointed under the Agency Ordinance but also the definition is that the Chief Executive can be either the person who is the Chief Executive normally or such other person as the Minister may appoint to administer the provisions of the Ordinance. That means that if the Minister were to decide that there was somebody else who ought to be running the fostering bit there would be two Chief Executives then.

HON CHIEF MINISTER:

If that were to happen that would be so but that would not make the person who was appointed as Chief Executive the Chief Executive of the Agency.

HON J J BOSSANO:

What would he be Chief Executive of?

HON CHIEF MINISTER:

He would be the Administrator of this legislation. I agree it is a misnomer.

HON J J BOSSANO:

It would then be a misnomer that is why we assumed that *"Director"* was in case the Chief Executive was going to be the Director or somebody else was going to be the Director of this I would have thought given that the Government want to have the freedom to choose if they find that it is better for some reason to choose somebody else in that case, presumably the provision is there to provide for the possibility.

HON CHIEF MINISTER:

It raises a good nomenclature point. I suppose one way to deal with it would be to leave the definition of Director and say *"Director means the person carrying out the duties of Chief Executive of the Agency or such other person as the Minister may appoint....."* leaving *"such other person"* if they are appointed to be called the *"Director of fostering."*

Can we cancel all the amendments that have been announced up to this point which involves deleting the word *"Director". "Director"* stays as a defined term. *"Director"* means the person carrying out the duties of Chief Executive of the Social Services Agency

and then it stays as it was. I am grateful to the Leader of the Opposition for his observation.

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

Clause 3

HON MRS Y DEL AGUA:

I gave prior notice that at paragraph (b) the word "*persons*" which is superfluous should be deleted.

HON J J BOSSANO:

In the general principles when we drew attention to this we were told by the Minister that this only applied to somebody being placed under an arrangement within Gibraltar. In fact the text does not say so but it seems peculiar to us that, for example, if someone is being looked after by a relative of the parents because both parents are working and it is decided that the grandparents should be looking after the child more or less on a permanent basis which happens here sometimes, after all we are close enough to be seeing each other all the time, they have to register with the Director who shall keep it under review. It says here, "*..if under an arrangement made by the parents the child is being looked after by another person whether for reward or otherwise, that person or persons shall notify the Director who shall keep the arrangement under review..*"

HON CHIEF MINISTER:

The definition of "*looking after a child*".

HON J J BOSSANO:

Yes, and "*looking after a child*" means looking after a child as if it were part of the family on a continual basis but does not include occasional visits. I am not saying if they take the child to the grandparents for lunch, I am saying if the child is being looked after by the grandparents in Gibraltar almost on a permanent basis then presumably they would be caught but if the grandparents were in La Linea then it would not matter.

HON CHIEF MINISTER:

It is not that it would not matter, it would not matter for the purpose of this Bill. We cannot legislate for what happens in La Linea.

HON J J BOSSANO:

No but the person who is making the arrangement is in Gibraltar and the person who has got to notify the Director is the parent not the grandparent. Even though it does not say an arrangement in Gibraltar we were told at the general principles that if they send the child to boarding school in England where he is being looked after albeit not as part of the family at least that is what I hear from people who have been to boarding school that it is hardly a family affair I would not know myself but they are still being looked after all the time but it does not matter. If the boarding school is in Gibraltar then it would matter, they would have to be notified. If someone is being looked after by a relative for example, if one has a parent that is ill for a long time and the child is being looked

after not as an occasional visitor by relatives or friends but on a permanent basis to give the parent with the problem a helping hand. It happens regularly in Gibraltar I would not have thought that those situations that are quite common need to be caught by the act which is dealing with fostering but if the Government think that it is important in order to safeguard the interests of a child that the Director should keep such an arrangement under review then I do not see why the Director should be informed. I am ill and for the next six months my child is going to be looked after by my sister in Gibraltar but it does not matter if the sister is in La Linea for example.

HON CHIEF MINISTER:

Mr Chairman, we are talking about private fostering arrangements. Fostering involves other people standing in not just whilst one goes out to work but for everything. I am not sure that the situation is quite as the hon Member describes it in terms of the usability of this language to catch that situation which he has described which obviously it is not intended to catch. This definition of looking after a child as I indicated this morning is one of the areas in which I have probed and frankly I have never been persuaded by the science behind this definition and perhaps we can deal with my own concerns and indeed with the ones that the hon Member has just articulated and perhaps we could add where it says, *"...but does not include occasional visits to family or friends...."* we could put *"or arrangements with a member of the family..."* I am free to ask my sister to take over my parental responsibility for one of my children without having to register that arrangement with the department. I propose that amendment to add the words *"...or arrangements with a member of the family..."* at the end of the definition of looking after a child.

HON J J BOSSANO:

That would meet some of the concerns we have. Let me just remind the House that in fact when we looked at it in the general principles the point that the Chief Minister made was in fact that the heading *"Private Fostering"* did not seem to fit.....

HON CHIEF MINISTER:

It does not help.

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

Clauses 4 to 7 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:-

(1) The Supreme Court Ordinance (Amendment) Bill 2002;

(2) The Transfer of Sentenced Persons Bill 2002;

(3) The Carriers' Liability Bill 2002;

(4) The Government Fees and Dues (Refunds) Bill 2002;

(5) The Fugitive Offenders Bill 2002;

(6) The Civil Air Terminal Ordinance (Amendment) Bill 2002;

(7) The Public Health (Amendment) Bill 2002;

(8) The Landfill Bill 2002;

(9) The Solvent Emissions Bill 2002; and

(10) The Fostering Bill 2002;

have been considered in Committee and agreed to, with amendments, and I now move that they be read a third time and passed.

Question put.

The Supreme Court Ordinance (Amendment) Bill 2002;

The Transfer of Sentenced Persons Bill 2002;

The Carriers' Liability Bill 2002;

The Government Fees and Dues (Refunds) Bill 2002;

The Fugitive Offenders Bill 2002;

The Civil Air Terminal Ordinance (Amendment) Bill 2002;

The Public Health (Amendment) Bill 2002;

The Landfill Bill 2002;

The Solvent Emissions Bill 2002; and

The Fostering Bill 2002;

were agreed to and read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that the House do now adjourn to Thursday 5th December 2002 at 10.00 am.

HON J J BOSSANO:

Mr Speaker, can I ask whether the Government will be prepared to suspend Standing Orders to take the motion of which I gave notice now rather than subsequent to the adjourned meeting given that obviously the closer we do it to the referendum the better and the sooner we make the call upon Her Majesty's Government to heed the voice of the people the better.

HON CHIEF MINISTER:

Mr Speaker, that is why I have reconvened the House on the 5th December and not later. Unfortunately we are just not ready to participate in this debate and actually although I agree that there should not be too much distance in time I think that sometimes things are more persuasive when they are not an immediate media reaction and we revisit it. I think it actually is an advantage in passing a motion a few weeks down the road than the day after as it all gets lost in the same sort of impetus. Were it not for that motion the House might have met later than Thursday 5th December 2002.

Question put. Agreed to.

The adjournment of the House was taken at 4.20 pm on Monday 18th November 2002.

THURSDAY 5TH DECEMBER 2002

The House resumed at 10.05 am.

PRESENT:

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

GOVERNMENT:

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

IN ATTENDANCE:

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

MOTIONS

HON CHIEF MINISTER:

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

Question put. Agreed to.

HON CHIEF MINISTER:

Mr Speaker, hon Members will recall that at the last sitting of the House we passed a Bill in relation to the Admiralty Shipping business which required a resolution of the House to activate it so to speak in the case of specific instances and this is the motion that does precisely that. That Bill received the Royal Assent sometime last week. I beg to move the motion standing in my name and which reads as follows:-

"This House Declares and Resolves:-

1. That it is in the economic interests of Gibraltar to encourage and incentivise the use of Gibraltar for the arrest of ships in support of maritime and admiralty litigation. Such use of Gibraltar generates significant economic activity in the following respects:-

    (i) Contribution to Government revenue through Poundage on sale proceeds, berthing fees and tonnage dues;

    (ii) The employment of ship keepers by the Admiralty Marshal;

    (iii) The purchase of goods and services from ship chandlers and other sectors of the Gibraltar retail, wholesale and service economy;

    (iv) The generation of fee income for law firms in Gibraltar;

    (v) The generation of business for hotels, airlines and the local travel and transport sector;

    (vi) The generation of business for port operators, including tugs, stevedores and fuel suppliers.

All of these contribute to job creation and sustainability in the economy.

2. That it is therefore in the economic interests of Gibraltar that arresting parties, especially those that use Gibraltar in respect of more than one vessel, be incentivised to use Gibraltar by the refund of part of the fees and dues (as defined in the Government (Fees and Dues) Ordinance) in the following manner.

3. That out of the revenue received by the Government into the Consolidated Fund in respect of "poundage" (commission) upon a sale of the ship by the Admiralty Marshal, a refund shall be made to the Admiralty Marshal (to be aggregated with the fund comprising the ship's proceeds of sale and paid out to whatever party may be entitled to payment out of such fund under order of court), in a sum representing the difference between (1) the said poundage paid or transferred to the Government upon the ship's sale and (2) the sum calculated in accordance with paragraph 4 below ("the deduction sum").

4. The deduction sum shall be calculated as follows:-

(1) where the arrest is not a fleet (as defined below) arrest and the sale price of the vessel exceeded £15,000,000 the deduction sum shall be 0.25% of the sale price of the vessel in excess of £15,000,000.

(2) Where a ship has been sold as part of a fleet the deduction sum in respect of each such ship shall be calculated in accordance with the following scale:

(i) Where the total fleet sale price did not exceed £30,000,000 the deduction sum shall be 0.2% of the sale price of each ship or the sum calculated under 4(1) above (whichever be the greater);

(ii) Where the total fleet sale price exceeded £30,000,000 the deduction sum shall be a sum equivalent to (1) 0.2% of the first £30,000,000 of the sale price of each ship plus 0.4% of the remainder therefore in excess of £30,000,000 or (2) the sum calculated under 4(1) above (whichever be the greater).

5. In this Resolution the following words and phrases shall have the meanings attributed to them herein:-

"fleet" - means two or more vessels that have been sold by the Admiralty Marshal in Gibraltar by order of the Court upon the application of the same party within a period of thirty days of each other.

"total fleet sale price" - means the sum resulting from the addition of the sale prices of all the ships in a fleet.

6. This Resolution shall apply to fees and dues received by the Government into the Consolidated Fund by virtue of poundage on sale by the Admiralty Marshal of any ship, the sale of which has been effected on or after the 1st day of November 2001."

Mr Speaker, I shall be moving an amendment to delete the words, "*representing the difference between (1) the said poundage paid or transferred to the Government upon the ship's sale and (2) the sum"* those are the words that would be deleted so that that sentence would end, *"...may be entitled to payment out of such fund under order of court), in a sum calculated in accordance with paragraph 4 below (the "refund sum")* rather than the *"deduction sum."* The reason for that amendment is that the subsequent formulation of the amount of the discount of the refund is that expressed by way of the amount of the refund so that one cannot talk about the difference between the 1 per cent and the refund. If the deduction sum is the poundage payable, one per cent, if the court poundage is one per cent and the bit that follows is 0.25 of one per cent and one deducts 0.25 per cent from one per cent the deduction would be 0.75 per cent of one per cent whereas the intention is to give the deduction of 0.25 per cent. The formulation of that sentence envisaged that paragraph 4 would be articulated by reference not to the amount of the discount but to the amount by which the fee rather than set out the discount, paragraph 4 would have set out the amount of the fee to be paid, so 1 per cent minus fee to be paid would equal the amount to be refunded.

Moving on after that amendment the refund sum shall be calculated as follows and this is the arithmetic of paragraph 4 with the original Ordinance that we passed in the House several months ago. The Government have not altered the formula of the discount it is exactly the same formula as was passed in the original Bill that we approved in the House. Where the arrest is not a fleet as defined below arrest and the sale price of the vessel exceeded £15 million the refund sum shall be 0.25 of 1 per cent of the sale price of the vessel in excess of £15 million. Hon Members may know that the amount actually payable is 1 per cent so if we deduct 0.25 of 1 per cent by way of refund what the person will actually have paid is 0.75 per cent.

(2) Where a ship has been sold as part of a fleet the refund sum in respect of each ship shall be calculated in accordance with the

following scale (1) were the total fleet sale price did not exceed £30 million the refund sum shall be 0.2 of 1 per cent of the sale price of each ship or the sum calculated under 4(1) above whichever is the greater or where the total fleet sale price exceeded £30 million the refund shall be a sum equivalent to 0.2 per cent of the first £30 million of the sale price of each ship plus 0.4 per cent of the remainder thereof in excess of £30 million. The net amount payable would be 0.8 per cent of the first £30 million and 0.6 per cent on any excess over £30 million, that hon Members will see, was the formula provided in the original Bill that we passed.

Paragraph (5) of the motion simply carries forward the same definition sections as was in the original Bill. In this Resolution the following words and phrases shall have the meanings attributed to them herein "*fleet*" – means two or more vessels that have been sold by the Admiralty Marshal in Gibraltar by order of the court upon the application of the same party within a period of 30 days of each other and "*total fleet sale price*" means the sum resulting from the addition of the sale price of all the ships in a fleet. Paragraph (6) This Resolution shall apply to fees and dues received by the Government into the Consolidated Fund by virtue of poundage sale by the Admiralty Marshal of any ship the sale of which is being effected on or after the 1st day of November 2001 and the hon Members know from the debate that we had on both Bills that the reason for that retrospection is to catch the Renaissance ships.

The last Bill that we passed at our last sitting if I could just remind hon Members what this motion has got to do – it has got to declare that it is in the economic interests of Gibraltar to make the refund and it has to specify the reasons why it is said to be so and I would hope to be able to persuade hon Members that the reasoning set out in paragraph 1 of my motion and indeed relying on their own knowledge of these matters sufficiently makes that case.

"If the refund enures to the benefit of an identifiable person or persons these shall be identified in the resolution by name or names" this is not a resolution that purports to deal with identified persons, it falls rather under section 3 (4) which says, "*if the refund enures to the benefit of persons engaged in a particular activity, then the resolution shall clearly and comprehensively identify and describe that particular activity,*" and this is a resolution brought to the House in relation to a benefit to enure persons engaged, any person and every person engaged in a particular activity which is identified as being the arrest of ships in support of Maritime and Admiralty litigation in the circumstances described in the motion. Then it says the motion shall specify the amount of fees or dues to be refunded and the hon Member will see that this motion does indeed provide a formula by which the exact amount of the refund can in every such case be calculated.

Mr Speaker, I am reluctant to go into too much detail this being in the economic interests of Gibraltar, I think it is clear, I am aware that the hon Members particularly the Leader of the Opposition have some experience in another capacity of this and I hope that they will be able to accept that the use of Gibraltar for the arrest of ships does indeed generate a large amount of economic activity which creates in a significant amount of income to the economy, government revenues and indeed to the personal economies of the individuals and businesses who provide goods and services to the ships. We have seen in the case of the Renaissance ships just how much it can contribute to Government revenues and that of course excludes the contribution that it makes to the rest of the economy.

I would hope that the House will be readily able to support this motion which together with the Bill that we passed at the last sitting together they do no more than deliver to Gibraltar the same economic benefit and regime as would have been achieved by the original Bill that we passed. I commend the motion to the House.

Question proposed.

HON J J BOSSANO:

Mr Speaker, there is no need to move the amendment because in fact it was in the process of a Bill being introduced. I have to say I do not know why the Chief Minister feels he would have had any difficulty in persuading us and needed to parade all these arguments because we were in agreement with the original. We understand the peculiar situation that the original did not get the commencement date for reasons that seem incomprehensible when they were explained to us and therefore we are quite happy to support the motion to do what the House has already decided should be done. I think that the only thing that perhaps is unexpected in this as compared to the original was that here we are talking about the refund being made to the Admiralty Marshal and I think the concept in the original Bill was that the refund would be made to the people who had to make the payment of the fee, at least that is how we understood it at the time and here the beneficiary of the refund is identified as the Admiralty Marshal to be aggregated with the fund comprising the process of the sale and paid out to whatever party may be entitled to the payment . I think both in the original Bill and in the Bill we passed recently to create the possibility of this resolution we thought the Bill required that the ultimate beneficiary of the reduced fee would be the one that needed to be identified and not the Admiralty Marshal who is in fact practically the Government paying itself with one hand to another hand as we were told originally when I asked whether the funds held by the Admiralty Marshal were outside the control of the Government and I was told, "No," they were in the Treasury even though they could not be accessed until everybody that had a right to payment had been paid. Apart from that the rest of it seems to be exactly in line with what we have already debated and agreed and therefore we have no difficulty whatsoever in voting in favour.

HON CHIEF MINISTER:

Mr Speaker, not so much a reply but just a clarification of the two points that the Leader of the Opposition has raised. Actually the explanation that I gave him last time was that although the Admiralty Marshal's account was not Government monies, it was an account maintained by her outside in her own name in a bank and that the only monies that entered the Government General Account were the Government's poundage as and when she paid it over. Just so that the hon Members can appreciate the mechanics of this, the original Bill they will recall was by way of reduction of the court fees so if the court fees say that upon the sale of a ship the Government are entitled to one per cent out of the proceeds the original Bill said in the terms of these formulas that the court fees shall be reduced. The court poundage which is what the Government receive shall be reduced to this formula so that when the Admiralty Marshal sells the ship no one actually pays this, this is not paid by either of the parties to the litigation, what happens is that when the ship is sold and the Admiralty Marshal has the sale price of the ship in her Admiralty Marshal's account she deducts from those proceeds, she deducts from that amount of money 1 per cent which is Government poundage and another one per cent just by way of interest and in passing which is her brokers fees. So that all that has happened is that the fund available in court to respond to whoever wins the litigation has been reduced by 2 per cent so if the ship is sold for £1 million one per cent comes to the Government, one per cent goes to the Marshal there is a fund representing 98 per cent usually less because then she also deducts other things, ship keepers costs, fuel, berthing and all the expenses that she has incurred also get deducted from that fund and the balance of the fund is what there is left for the parties to the litigation to argue over. Here because we are not any longer doing it by way of reduction of the court fees we now have a situation in which the Admiralty Marshal is actually going to reduce the sum by one per cent and send it to the Government so there is now a fund representing 99 per cent before other things have been deducted from it for the parties to argue over it and what we are trying to say, what we are trying to agree is that that sum should not be depleted by a whole one per

cent. We want the depletion of it to be less than one per cent and the amount that we want it to be depleted by is the formula that we have agreed in this motion today so that then raises the question "to whom is that paid?" It cannot be paid to the arresting party, (a) because he has not paid the original fee and (b) because he may not win the action so the refund has got to go back to the Admiralty Marshal to be aggregated again with the proceeds of sale funds at that point we have achieved our objective, we have reduced the amount by which the fund in court the subject matter of the litigation, is depleted and then it gets paid out so that the benefit of our discount, the benefit of our refund actually goes to whoever wins the money in the court case. We cannot assume that it is going to be the arresting bank, it is quite unusual but there may be a case in which a ship owner succeeds in challenging the validity of the mortgage or there may be a case in which the crew wages claim which as he knows takes priority to the mortgage claim may exceed the value of the ship and therefore the mortgage bank who may have arrested the ship may not get any money even though they win the action. So the only mechanically correct way and also the only way consistent with the fact that the court may not yet have adjudicated on the distribution of these funds is for the element of refund to go back to where it came from and that is why the payee in the motion is described as the Admiralty Marshal.

Question put. The amended motion was carried unanimously.

PRIVATE MEMBERS' MOTION

HON J J BOSSANO:

Mr Speaker, I beg to move the suspension of Standing Orders to enable me to proceed with the motion out of time on the Agenda of which I have already given notice.

Question put. Agreed to.

HON J J BOSSANO:

Mr Speaker, I beg to move the motion of which I have given notice namely that :-

"This House

(1) Warmly welcomes the magnificent result of the referendum in which almost 99% of the people voting rejected the principle of sharing sovereignty with Spain, as the House unanimously recommended on 18th October 2002.

(2) Hereby expresses its profound gratitude to the people of Gibraltar for the high turnout and the clear expression of unity.

(3) Considers that the people have clearly spoken to Her Majesty's Government in the democratic expression of their wishes on the question of sovereignty, thus supporting the views previously expressed by resolution of this House, the Parliament of Gibraltar.

(4) Calls upon Her Majesty's Government to take heed of the voice of the people, discontinue any further sovereignty negotiations with Spain and rescind the broad agreement in principle on the sharing of sovereignty announced by the Foreign Secretary on 12th July 2002."

Mr Speaker, the purpose of bringing the motion to the House is of course self-evident from the text that I have read. In bringing this motion I know that all I am doing is putting on paper what all of us

feel and the purpose of it is not just as the first and second paragraph show to demonstrate the appreciation of the House of Assembly as I think it gives us an opportunity to do for the fact that independent of party political views the people rallied around a united call from their elected representatives in this House and magnificently demonstrated that the Gibraltarians when they come together are a force to be reckoned with by the clear result which left no room for doubt as to what we feel. The importance of having that recorded in the House would be no more than an expression of sentiment of what I think is a turning point in the history of Gibraltar as the Referendum of 1967 was but also to reinforce the view that I think everyone of the 17,000 Gibraltarians that voted 'No' holds and that is that the United Kingdom should not and cannot ignore what the people of Gibraltar have said in the Referendum and that therefore the United Kingdom has an obligation as a democracy and indeed an obligation as the administering power under the Charter of the United Nations to act in accordance with the freely and democratically expressed wishes of the people of Gibraltar as indeed the Preamble to the Constitution requires them to do.

The Preamble to the Constitution says that they have to act in accordance with our wishes when it comes to an issue of sovereignty and in fact the announcement of broad principle on the 12th July came very, very close to being the description of an arrangement under which the people of Gibraltar would come partly under the sovereignty of another state. The fact that the United Kingdom considers that that does not breach their Referendum unless they attempt to implement it against our wishes is a matter for debate. We believe they are not entitled to even commit themselves to do it against our wishes and therefore we believe that Her Majesty's Government have acted incorrectly from day one, that they should have first sought our views on what they had planned before they proceeded with it, if they were so convinced that it was such a glorious future for us well we are the people who have to be convinced of that. They have made no attempts to convince us they have acted in a typical Victorian colonial fashion of saying, "....we know better what is good for you than you do yourselves and therefore we are going to go ahead and when you come to your senses then we will ask you if you are ready to implement it." That is the basic position that they have left. I have no doubt that the United Kingdom may make lots of statements saying nothing has been changed by the Referendum but politically something very important has been changed by the Referendum and we believe we must hold the United Kingdom to respect the wishes of the people of Gibraltar as indeed they should have respected the wishes of this House and we might not have needed a Referendum if the British Government had been willing to accept that we represent what the people want because we are elected by the people and we are closer to them. I commend the motion to the House.

Question proposed.

HON CHIEF MINISTER:

Mr Speaker, could I first of all say that the Government share the purpose and objective of the Leader of the Opposition in moving this motion. I think that it is important that we should rap up post referendum with a motion in this House not just for the reasons that he has outlined in his last point but also because there have been a series of motions that this House has been passing throughout the last 12 months and it is appropriate that this House should also comment as indeed the House of Commons has already commented on the aftermath of the Referendum. I am going to propose an alternative formula of words because I think that the hon Member's motion should be wider and I do not think he will have any great difficulty with the alternative language that I will propose to him in a moment but before doing so I would just like to say one or two things in support of the comments that he has made. I think that it is absolutely right that the United Kingdom and I think this was the essence of the last or second last point that he made, that the United Kingdom Government

should not devalue the status of this Assembly as a representative body by trying to go over its head directly to the people of Gibraltar. It is of course perfectly legitimate for others other than the Government to lobby the people of Gibraltar I do not think we can have any objection to that. The Government, Opposition, Parliament of Gibraltar can take a view of one thing and then others including the British Government can participate in a public debate and lobby the people of Gibraltar to a different view. It is the basic building blocks of the democratic process with which I suspect neither he nor I would wish to interfere but there is a difference between that on the one hand and failing to recognise that when it comes to formally representing Gibraltar it is the Government and its parliament that have been elected to do that so that when parliament reaches a conclusion or when the Government reach a policy especially but not only when it is backed by parliament unanimously then the UK should take that as the Gibraltar view and not proceed regardless. So this is not a question of lobbying Gibraltar public opinion to which we can have no objection it is rather a case of the UK proceeding notwithstanding that it already knew to a democratically sufficient extent the view of the people of Gibraltar because all of their elected representatives had said so and that is the essence in which I believe that it is important that this (a) parliament should not be devalued and (b) that Gibraltar should be careful not to allow others to try to devalue and I think that one of the reasons why the result was so overwhelmingly 'magnificent', I think is the word that the hon Member would have wanted to use, was because amongst other things people in Gibraltar were saying that.

The hon Member says that the United Kingdom should first have sought our views on what they had planned. I can tell hon Members that at the very first indication that things were proceeding on the basis of joint sovereignty, I think it was sometime in October or November that the Gibraltar Government made it perfectly clear in writing to the British Government that neither the Government nor the people of Gibraltar would countenance anyway forward based on joint sovereignty. Therefore nothing that happened after that from the British Government could have been in the remotest doubt at least of the Gibraltar Government's statement of their own position and of the Gibraltar Government's assessment of what the people of Gibraltar would have which should not be either likely, we could get the judgement wrong but we are unlikely to get it so completely wrong that it would entitle them to proceed notwithstanding. So, I do not know to what extent the hon Members' views in Opposition might have been sought. I am aware that there is consultation processes and they do meet ministers when they visit and things like that but certainly speaking for us we have made that view clear and it became clear earlier on to the Government which is why we, I call it 'press the button' with the campaign, that the British Government were determined to proceed anyway. The hon Members may recall a little piece that appeared in 'The Entertainer' that is published up the coast in which at the very outset in June/July last year when this whole process was started there was a little sort of five line piece tucked away in 'The Entertainer' attributed to a conversation with a presumably quite indiscreet member of the British diplomatic service who had apparently told this reporter that an attempt would be made to bring the Gibraltar Government on side but that it did not matter because whether they came on side or not in terms of participating in the process the plan that was the essence of the agreement that they came to in summer to launch this negotiation that they would carry on regardless. They would carry on regardless of whether they succeeded or not in persuading the Government of Gibraltar to participate in the process.

Mr Speaker, I would like to distribute to the hon Members an alternative form of wording which I hope that they will find as little more than expand on some of the issues that they have raised and also add a couple of new ones because I profoundly believe that on the 7th November the people of Gibraltar were doing more than saying 'No' to joint sovereignty. I think that they were saying 'No' to joint sovereignty clearly but they were also making a statement about their political rights and aspirations as a people

regardless and in addition to what they were saying on joint sovereignty. So, Mr Speaker, if I could just take the hon Members by way of amendment to the alternative and I think fuller language to this motion.

Paragraph 1 follows almost the same. I will explain the slight differences in a moment the wording of the hon Member's motion. "*Warmly welcomes the result of the Referendum held on the 7th November 2002 in which by a majority of...*" I think that the House should be precise given that hopefully this motion will form part of Gibraltar's parliamentary history I think that the House should be precise as to the percentages, 98.97 per cent, "*the people of Gibraltar rejected as this House had unanimously recommended by motion on the 18th October the principle that Britain and Spain should share sovereignty of Gibraltar.*" I think that the hon Member will first of all recognise fully the sentiment of his first paragraph all that is missing is the word '*magnificent*'. I think we should allow the facts to speak for themselves, clearly it is a magnificent result, it is a result which we all hoped and prayed for and some of us in the odd moment feared might not be produced in its enormity but I think that this House should warmly welcome as he would like to do the result rather than to describe it as '*magnificent'* although I think it is more than '*magnificent'* but I think we should just not describe it we should allow the facts to speak for themselves.

The second paragraph where the hon Member wants to express profound gratitude I really do not believe it is for this House to express gratitude in that sense. This House is part of the people of Gibraltar we are the representatives of the people of Gibraltar and an integral part of them and I do not think that it is capable I fear of sounding almost patronising as if the people of Gibraltar had said what they had said as an aide to provide us with a prop for the business of this House. I know that that is not the sentiment of the hon Member, of course it is not the sentiment that the hon Member intended and indeed he may not think it is open to that interpretation but I would prefer that the House expresses its admiration and satisfaction at, as he says, the high turnout and then I would like to say, *"the clear and dignified statement by the people of Gibraltar of their commitment and resolve to uphold the political rights as a people including the right to self determination, that is a right to freely and democratically decide our own future."* I do believe that part of what happened on the 7th November 2002 was the people of Gibraltar saying, " *..we do not agree with the objective of joint sovereignty but in any event we think the way you went about it violates our aspirations and rights as a people to self-determination."* I would then like to add a statement in which the House says that we consider that the sovereignty of Gibraltar is not negotiable contrary to the wishes and without the consent of the people of Gibraltar. In other words, it is not for the UK and Spain to negotiate, we believe, the sovereignty of Gibraltar as if we were just incidental to the political process. The sovereignty of Gibraltar being the sovereignty of our homeland and therefore in every democratic sense the sovereignty being in a sense inalienable from the people should not be negotiated at all unless the day ever comes that the people of Gibraltar themselves want to have their sovereignty negotiated and with their consent. That day has not arrived yet but it may arrive it is not for us to say. So, the principle is that the sovereignty is ours. It is British sovereignty but it is British sovereignty that cannot be and should not be transacted without our consent and contrary to our wishes and non of this business of drawing a distinction between declarations of principle and implementation in practice. This idea that it is okay for Britain to enter into declarations of principle affecting our sovereignty so long as they do not implement them in practice without our consent in a veto is an inadequate recognition of our rights in relation to sovereignty and then it is an inadequate recognition of our right to self-determination. It is even narrower than the Preamble to the Constitution. I think it is common ground across the floor of the House that the Preamble to the Constitution, safety net as it is, is an inadequately narrow definition of our rights as a people to self-determination. Our rights as a people are wider than the right to say 'No' to Spanish sovereignty and what the British Government had intended to do was to even narrow the Preamble because as the hon Members recall I have said in

this House in the past that my view is that the Declaration of Principles that they intend actually amounts to a breach of the Preamble because the Preamble does not say the United Kingdom will never implement in practice any deal on sovereignty contrary to the wishes of the people. The Preamble to the Constitution says that the united Kingdom will not enter into arrangements and I have always believed and said inside and out of this House that the Declaration of Principles that they had mooted constitutes an arrangement. In the English language the word *'arrangement'* means that one enters an arrangement when one signs a piece of paper not when one consummates in practice the contents of that piece of paper and therefore I believe that the United Kingdom's methodology, forget what we think about the substance of what they were doing, the methodology amounted in fact to a narrowing still further of our political rights not just now to the Preamble which was already too narrow compared to the right to self-determination but indeed narrowing even the Preamble by drawing this distinction between practical implementation and declaration of principles and that distinction does not fit in the word '*arrangement*'. The word '*arrangement*' which is the word used in the Preamble does not allow for that distinction to be drawn whilst at the same time honouring the spirit and the letter of the Preamble itself and I believe it is therefore important that there should be a statement in this area in this motion.

Fourthly, that the House considers the hon Member's motion that the people of Gibraltar have clearly spoken to Her Majesty's Government in the democratic expression of their wishes. It is true that I have altered *'views'* to *'wishes'* I think we should be asking the British Government to take account of our wishes and not simply to take account of our views which is the only substantial difference between this paragraph and the one which would be paragraph (3) in the hon Member's motion and, "..*we have spoken* clearly *in the democratic expression of our wishes on the question of shared sovereignty."* That is what the issue was on the voting paper so if we are going to use the word *'clearly'* as I said before I believe we have expressed a view on other issues as well but the only one upon it can be said we have spoken clearly is on the question of joint sovereignty which is the issue on the voting paper. Therefore these are what I would call the operative paragraphs which I would wish the House to approve *"...calls upon Her Majesty's Government to take heed of the wishes of the people of Gibraltar, discontinue negotiations leading to a bilateral Anglo-Spanish Declaration of Principles including the principle of joint sovereignty or any other sovereignty concession against the wishes of the people of Gibraltar and without their consent."* What we are doing in that paragraph is saying, "..*take heed of our wishes expressed in the Referendum the Anglo-Spanish declaration that you say you are negotiating is based on the objective of joint sovereignty, discontinue those negotiations because it is not right that you should continue to negotiate an objective which you know that 99 per cent of the people of Gibraltar are opposed to nor should you enter into any other form of declaration which includes any other basis perhaps not joint sovereignty or any other sovereignty concession against the wishes of the people of Gibraltar and without their consent."*

Six, *" ..Calls upon Her Majesty's Government to take steps to ensure that the Spanish Government cannot, now or in the future, interpret and present Mr Straw's statement in the House of Commons of the 12th July 2002, as an agreement by Her Majesty's Government to share sovereignty or as a concession or any agreement to make a concession to Spain in relation to the sovereignty of Gibraltar."* The equivalent part of the hon Member's motion calls on the British Government to rescind the broad agreement in principle whereas Government have a slightly different suggested formulation. The reason for our proposed language is this, it is two-fold. First of all although I think that we can agree in this House that Mr Straw's declaration of the 12th July amounted to a massive political concession .....a British Foreign Secretary stands up in the House of Commons and says, "..*I am willing..."* the least that he said, the least that that statement meant was "....*the British Government are willing to share the sovereignty of Gibraltar with Spain."* Well, that has a political concessionary value but I do not think that we should be

the ones to crystalise it into an actual agreement. The British Government said recently that there is no agreement. Ramon de Miguel is reported in today's Chronicle as saying, " *In this process nothing is agreed until everything is agreed."* So, they are not regarding the statement of the 12th July as an agreement and we should avoid political statements that suggest that we are elevating it to the status of an agreement. It is true that he used the words "*...broad agreement...."* but in the context that he was using the words they really meant "*..we the British Government are willing to agree that and that has already been tentatively achieved in the context of a global agreement which has not yet been settled."* So, there is enough for us in Gibraltar to have found completely unacceptable. There is a political concession on the question of sovereignty, there is no doubt about that in Mr Straw's statement of the 12th July but there is not an agreement and I realise that the words "*broad agreement"* do not necessarily mean the same as an agreement but I would much prefer that we avoid language in the political context of this motion that would give any credence to the suggestion that there is an agreement and therefore we would like to approach it from the other end of the tunnel. What does Gibraltar's interests most require? Well I suppose our first preference would be that it were not the position of the British Government that she was politically willing to share the sovereignty of Gibraltar but given that they will say that that is a matter of their opinion indeed I remember the hon Member saying in this House many months ago that the problem with the Declaration of Principles, when he was trying to argue that my own assessment of the 'done deal' was wrong, he used to say, "*once the concession has been made it cannot be retrieved,"* and that remains presumably today.....*[HON J J BOSSANO: Whatever we say]*.....whatever we say. So there is no point asking him to rescind what he said in that context, to rescind what he said on the 12th July because he has said it and by the hon Member's own analysis the main damage which is the British Government saying, "*I am willing to share the sovereignty of Gibraltar,"* that is gone. What is not gone and which I think is the reason for my change of language and which was what I think we ought to be concentrating on is to ensure that the British Government do whatever it takes to make sure that the Spaniards cannot ever claim in the future that this was an agreement and that is why we are suggesting the words "*..Calls upon Her Majesty's Government to take steps to ensure that the Spanish Government cannot now or in the future...."* No Spanish Government should be able to stand up in five years time and say, "*...In the year 2002 the British Government and Spain agreed to share sovereignty of Gibraltar..."* nor that they "*...should take steps to ensure that the Spanish Government cannot now or in the future interpret and present Mr Straw's statement in the House of Commons on the 12th July 2002 as an agreement by Her Majesty's Government to share sovereignty or as a concession or any agreement to make a concession to Spain in relation to the sovereignty of Gibraltar."*

Finally and as our seventh proposed paragraph we would like to repeat the statement made in the motion unanimously passed in this House on the 25th March 2002 earlier this year in which the House expressed its support for Gibraltar's participation in reasonable dialogue and support for good neighbourly European relations with Spain based on reasonable dialogue and mutual respect. I believe that it is important to show that Gibraltar has not been derailed from its own position by what it has done to defend itself against what they had intended to do between themselves. In other words, that they should not even gain from this having pushed Gibraltar into a corner in which they will be able to present us to the world as unreasonable, that they should not even get that benefit from the events of the last 12 months. Certainly as far as the Government are concerned our position remains as it has always been and I draw the language from the motion of the 25th March in this House which I think we agreed was neutral as to the respective positions dialogue across the floor of this House. Reasonable dialogue and support for good neighbourly European relations with Spain based on that reasonable dialogue and mutual respect.

Mr Speaker, I hope that the hon Members can agree that we have saved or tried to save the purpose, spirit and the intention of their

motion and that what we have done is to expand it principally to include the clear and dignified statement by the people of Gibraltar of their commitment and resolve to uphold their political rights as a people including self-determination, that is one addition, the other big addition is this business about the sovereignty of Gibraltar is not negotiable contrary to the wishes and without the consent of the people of Gibraltar. There is a recasting of the language in what we call Her Majesty's Government to do in terms of the rescinding on the one hand or taking steps to ensure that this cannot be presented as an agreement on the other and finally there is the addition of this statement about Gibraltar's continued willingness to take part in reasonable dialogue and support for good neighbourly European relations based on reasonable dialogue and mutual respect. I think that this motion does everything that the motion of the hon Members' intended which we support and also sets out Gibraltar's position more fully so that it is a more important wider ranging political statement than the more narrow objective of the hon Member's original text. I commend the amendment to the House.

Question proposed.

HON J J BOSSANO:

Mr Speaker, the amendment does go further than the original motion but it goes further because it comes back again with this business of reasonable dialogue and Gibraltar's participation in talks and it is true that the Opposition Members have on previous occasions gone along with such amendments all of which have come from the Government including when all the elected Members past and present signed the joint declaration it was the Government that insisted of putting in there the reasonable dialogue and Gibraltar's participation and for the sake of unity we kept on doing it. We think that putting it there is not rescuing Gibraltar from Spain being able to say how unreasonable we are. We think that to say at this point in time when we have been told as if we were people that needed to be told things in words of one syllable because we are incapable of understanding two syllables. We have been told by the British Government that the only dialogue possible with Spain not just Spain is saying that, Spain has been saying that since they signed the Brussels Agreement in 1984 and since Señor Moran proposed joint sovereignty in February 1985 and they made it clear then, they made it clear in 1980 in the Lisbon Agreement, they made it clear on every conceivable occasion that as far as they are concerned the purpose of negotiations with Spain is one that we buy their co-operation and the price that we pay for buying their co-operation are sovereignty concessions. That is as far as Spain is concerned with reasonable dialogue. If that is not what the Government understand by reasonable dialogue and on a number of occasions not on every occasion they have made it clear that they do not consider it reasonable that we should have to buy what we are entitled to anyway by making sovereignty concessions. Then if we are going to keep on using the word 'reasonable dialogue' then we need to qualify reasonable dialogue by adding and I propose that the motion be amended by the addition of the words……

MR SPEAKER:

Sorry, the motion or the amendment ?

HON J J BOSSANO:

The motion to which I am speaking now which is the amendment to mine. The amendment to my motion……by adding the words after the word "*dialogue"* in paragraph (7) " *..in which the issues of sovereignty are not discussed"* because even though we might not have spelt it out in the motion of the 25th March I

imagine that it was not the intention of the Government on the 25th March to say, "*....we support Gibraltar's participation in reasonable dialogue that includes discussing the issues of sovereignty.*" If we are discussing the issues of sovereignty then I believe we need to have another Referendum because I think that the people of Gibraltar in this Referendum have stated quite clearly what their wishes are and their wishes are that they do not consider the sovereignty of Gibraltar to be negotiable and therefore in paragraph (3) when we say, "... *that this House considers that the sovereignty of Gibraltar is not negotiable contrary to the wishes and without the consent of the people,*" I think we need to say as well that the Referendum in fact has been an expression of our wishes that it is not negotiable and in fact that we are not giving our consent. If we make a statement that the sovereignty of Gibraltar is not negotiable contrary to the wishes and without the consent of the people we seem to be saying that we do not know whether that is their wish or if they would give their consent. Well, we do know. That is what we went to ask them. As far as I am concerned we cannot use joint sovereignty and sharing sovereignty interchangeably. The principle of not sharing sovereignty with Spain means that sovereignty is not on the negotiating table that it is not a matter that can form part of a discussion with our neighbour in order to improve friendly, neighbourly relations. Nobody that I know of in the world thinks that it is a necessary condition of any discussion of friendly relations that one discusses the possibility of being taken over by the people one wishes to be friendly with. We cannot support the amendment as it stands unless we make it absolutely clear, it might not be the intention of the Government to make it unclear but just like the Government interpret some of the things in my original motion as raising doubt, for example, elevating something to an agreement that is not in an agreement, well the original text makes it crystal clear that what we are asking should be rescinded is the statement made in the Commons because it is the statement of principle, the broad agreement in principle on sharing sovereignty announced by the Foreign Secretary on the 12th July. We do not agree with the Government's reading of that which says, "*....because we are saying that they are,*" we are giving Spain comfort, a weapon, to argue that what the Foreign Secretary said is in fact something that has now been agreed. No. We are quoting what the Foreign Secretary said and we think the Foreign Secretary should tell Spain, " *.....the broad agreement we had with you on the 12th July is something we can no longer subscribe to because the House of Assembly of Gibraltar and the people of Gibraltar have now expressed their wishes on that broad agreement in principle they are against it and in order to respect the wishes as we are committed to do we have to tell you the broad agreement in principle is now null and void.*" That will not stop any future discussions from starting off from that broad agreement. In principle because that is inevitable, and anybody that has ever been involved in any negotiations at any level knows that once one puts an offer on the table one may say, "*.....well since there is no agreement I withdraw the offer but one cannot withdraw it from the memory cells of the negotiators,*" and Spain knows now that the British Government are prepared to share the sovereignty of Gibraltar with them, it has probably known that this was something the British Government were willing to do for a very long time, the British Government are now saying that that is what was intended by the Brussels declaration of 1984 so there is no longer one version of what discussing the issues of sovereignty means which is the Spanish version and a different version which is the British version which was the case publicly previous to the 12th July and I believe privately there has always been one version but now it is a statement of policy of the present Labour Government which has not changed since the 7th November, the British Government still have the same policy what has changed is that they are not in a position to pursue that policy. If we argue as we do that the British Government are not free to negotiate Gibraltar's sovereignty with Spain because that sovereignty is ours as a colonial territory, the sovereignty of Gibraltar is held by the British Government and the British Crown as the administering power and the degree to which they exercise that sovereignty is a moving element. It is not a static element, it is a moving element because they are required by the Charter of the United Nations and by the Decolonisation Resolutions to pursue and assist us in pursuing increasing doses of self-government which erode the exercise of that sovereignty.

Therefore if we say they are not free to negotiate it because it is not negotiable contrary to the wishes and without the consent then I believe that the Referendum has said that we do not consent and that it is against our wishes. That would only be capable of one interpretation in our judgement but I would like to see that drafted in a way that makes it clear that that is the only possible interpretation, which is, that if at a future date the British Government wanted to find out whether the people of Gibraltar were willing to give their consent to sovereignty negotiations and no longer wished that it should not be negotiable we would have to have another Referendum to see if the people of Gibraltar at a future date do not vote 98.97 per cent that sovereignty is not negotiable because I believe that they have voted that sovereignty is not negotiable and we are putting something there which is a repetition of what we have put before the Referendum as if the Referendum had not decided the issue. So in respect of that paragraph I wish to move the addition of the words, "*.....and that the Referendum result clearly demonstrates ……..*

MR SPEAKER:

You already had an amendment to paragraph (7).

HON J J BOSSANO:

Yes.

MR SPEAKER:

What now?

HON J J BOSSANO:

Now I am moving an amendment to the clause to which I am speaking which is, "*…considers that the sovereignty of Gibraltar is not negotiable contrary to the wishes, and without the consent, of the people of Gibraltar, ……..*" this is at the end of 3, I have already suggested that at 7 the insertion after the word *"dialogue"* in which the issues of sovereignty are not discussed. The 7th paragraph the amendment already proposed is in the second line that we support Gibraltar's participation in reasonable dialogue, "*in which the issues of sovereignty are not discussed.*" That is not let me say as I have already intended necessarily the view of other parties it is quite clear that the British Government, the Spanish Government, the European Union and the United Nations all think it is perfectly reasonable that the issues of sovereignty should be discussed, we do not.

MR SPEAKER:

You have got another amendment to paragraph 3.

HON J J BOSSANO:

Now what I am proposing is that in order to remove any possible ambiguity or misunderstanding as to what the position is regarding sovereignty negotiations we agree entirely that we consider that the sovereignty of Gibraltar is not negotiable contrary to the wishes and without the consent of the people but we believe that the Referendum result has in fact settled the question and therefore we are proposing to add the words, "*……and that the result of the referendum is a clear statement that the people of Gibraltar do not wish that there should be sovereignty negotiations and do not give their consent to any such negotiations….*"

MR SPEAKER:

As that is a long amendment could I have it in writing?

HON J J BOSSANO:

Obviously it is important for us as I have no doubt it is important for the Government that the House should be able to continue to maintain a unanimous position on this but I am afraid we are not willing to go along with the additions. We have no problem with the re-formulation which effectively retains what was in the original motion but doing it in different ways. We do not think, for example, that expressing profound gratitude is treating the people of Gibraltar with any kind of disrespect and obviously the Chief Minister did not think so either when he spoke in Mackintosh Hall on the night of the Referendum and expressed his gratitude to the people for having voted and for having come out to vote and since he spoke alone presumably he was not speaking for the Government because given that he did not give the opportunity to the Opposition to have joined in expressing gratitude, he must have been speaking for the whole House. So, all that we are doing today is what he did on that night but if he wants us to replace gratitude by "*admiration and satisfaction*" since we feel all three things we do not mind expressing in an addition to the gratitude with which we arrived in the House the "*...admiration and satisfaction* " with which we will be leaving today. But of course, the bits that I am questioning are bits that are not implicit in the first one. We believe it is possible for the Government to support what we had without abandoning their insistence on the importance of telling the world how much we want to have dialogue with Spain. We do not believe that Spain's portrayal of us as wanting or not wanting dialogue is going to make one iota of difference to the nature of the relationship we are going to be enjoying as a result of the voting in the referendum and I think that therefore if it is not qualified then I am afraid the only way that we can compromise on this is that we take separate votes on the separate sections and then let those sections on which we are not prepared to vote be passed by the Government with the Government voting alone. I commend the amendments.

MR SPEAKER:

If you read it out now and then pass the amendments.

HON J J BOSSANO:

'And that the result of the Referendum is a clear statement that the people of Gibraltar do not wish that there should be sovereignty negotiations and do not give their consent.' Let me say of course that in the things that we are calling upon the British Government to do we say again that the British Government should take heed of the wishes of the people of Gibraltar and discontinue the principle of joint sovereignty or any other sovereignty concession against the wishes of the people of Gibraltar and without their consent. Are we saying that the negotiations leading to an Anglo-Spanish Declaration of Principles is what we are against, alone? No. We are against that and we are against anything else that involves sovereignty and the Government of Gibraltar tell us that this is what they told the British Government last November, a year ago when it was clear that this was the route, well it is even clearer post the 12th July. Indeed we have been told by Jack Straw on the 12th July that there is no alternative to this that for the case the British Government have attempted to persuade the Spaniards to remove the restrictions without a quid pro quo in the expectation that a climate might be created which might make the Gibraltarians at some unspecified, remote, very remote, future date change their minds about wanting to or being willing to accept some form of Spanish sovereignty over Gibraltar. The Spaniards will not buy that they have not bought it for 30 years and the British Government now accept that after 30 years they are flogging a dead horse. So the British Government have told

us two things, that this is the only way that we can buy peace with Spain, and that if by reasonable dialogue we mean getting Spain to behave like a civilised country there is no mileage in pursuing that because that is what they have been trying to get Spain to do for 30 years and we cannot keep on repeating things that we have said in the past without taking into account of the new developments that take place. I commend the amendments to the motion.

MR SPEAKER:

At this stage we have got two amendments to the amendment so now as this is a new amendment I call on the Chief Minister to speak on it and then we will take a vote on the two small amendments.

HON CHIEF MINISTER:

Mr Speaker, speaking therefore only to the hon Members amendments to my amendment. Government Members could support one of them in modified form and modify it only so that it should be accurate not because actually there is any difference. I probably agree with him but I think that we have got to be accurate and not go further than we can in the interpretation of a Referendum result. I will explain myself further in a moment and the second proposed amendment we cannot go along with for the reasons that I will also explain. The hon Member has proposed that the motion should include a signal, I do not wish to understate what he is proposing I just do not want to get bogged down in preambular language, he has proposed that the motion should include language which means that the Referendum shows that the people of Gibraltar do not want sovereignty negotiated. Well, I agree with him that the people of Gibraltar and indeed the Government of Gibraltar and presumably the Opposition of Gibraltar does not want sovereignty negotiated but I do not think it follows necessarily from the result of the Referendum. In the Referendum the people voted 'No' to joint sovereignty....*[HON J J BOSSANO: To sharing sovereignty...]*.....I am not trying to draw a distinction between joint and shared sovereignty. I personally believe that that distinction only becomes relevant when one is already in the realms of one of them and both are unacceptable. It is said just by way of passing I believe by those that engage in the analysis of semantics that joint sovereignty means that they each have 50 per cent and that shared sovereignty is alleged to mean that they jointly hold 100 per cent....*[HON J J BOSSANO: ....or any other...]*....no, joint sovereignty could be in disequal proportions, shared sovereignty is co-ownership of the whole as opposed to separate percentages of the whole. I frankly believe that politically speaking that is a distinction without a difference. What difference does it make whether it is 60-40 or shared sovereignty? I think that the debate about the nuance difference between shared and joint come at a point in the debate when frankly Gibraltar has lost. The difference between winning and loosing for Gibraltar is not the difference between shared and joint sovereignty I think the hon Members would agree to that so it is not actually a debate, I never discuss the difference between joint and shared sovereignty. The Government would have no difficulty in making a statement that we believe is correct. The statement that we believe is correct is that the people of Gibraltar do not want sovereignty negotiated so let us just say that. Let us just not say that the Referendum suggests or is a clear statement thereby giving people the opportunity to say, London and Madrid, how can you say that the answer is the answer to the question. One cannot then get the answer and broaden its applications to other questions why run that risk? I am very happy to say instead of the words that he wants to add to my paragraph 3 just say what we mean which is,".....*and that the people of Gibraltar do not want any degree of Spanish sovereignty over Gibraltar negotiated."* That is a statement of fact which we believe is implicit in paragraph 3 as it stood. I understand that adding words he believes says, well one cannot negotiate sovereignty without the consent of the people of Gibraltar and the people of Gibraltar do not consent to what he is adding. Of course the people of

Gibraltar do not consent to a negotiation of sovereignty. We have to allow for the fact that there is a difference between negotiation and discussions and the hon Member is not going to persuade the Government to retreat into an indefensible position based on his own, I have to say irrational, contorted, argumentative logic. Yes, the argumentation is not rational I do not believe that the argumentation that he follows to make his point is logically rational. For a start, Mr Speaker, he cannot stand up in this House and say that he does not support discussion on sovereignty. He has said it this morning but he is I believe stopped by his own previous political positions from making that statement and defending it with chronological coherence over a period of time. It was the Opposition Members that went to a general election, I do not remember if it was in 1996 or 2000, with the manifesto commitment of willingness to participate in open agenda dialogue, does he remember that? They went to the people of Gibraltar saying, "Vote for me I believe in open agenda dialogue." That is their position. Presumably when they say open agenda dialogue, dialogue means discussion by the way not negotiations, there is a difference between dialogue and discussion on the one hand and negotiating something on the other and this is a distinction that the hon Member now, he used to draw the distinction in his own favour when he was in Government but now that he is in Opposition will not allow the present Government to draw the same distinction. We are not going to fall into that trap. Presumably when the hon Member told the electorate of Gibraltar, "Vote for me because I believe in open agenda dialogue," he did not think that open agenda dialogue meant that it was open for him so that he could raise whatever he wanted but it was not open for Spain so that Spain could not raise whatever it wanted. Most intelligent people understand by open agenda dialogue that it is open that any party can raise for discussion any issue that they want and that commitment of theirs to open agenda dialogue recognises the fact that there is all the difference in the world between dialoguing about something, discussing something on the one hand and negotiating it on the other. He cannot unless he has done a U-turn, usually he accuses me of doing U-turns but frankly I think the only political party in Gibraltar that has done a U-turn is the GSLP *[Laughter],* yes, because from a position of offering themselves to the electorate, they can giggle if they want but the reality of it is that from a position of going to an election saying to the people of Gibraltar and not just in the manifesto, in hustings, debates and in press releases open agenda dialogue – of course we are in favour of open agenda dialogue how can any reasonable person not be in favour of reasonable dialogue? I can hear Dr Garcia saying it now, of course who could be against reasonable open agenda dialogue? From that position to saying as the hon Member has said this morning, we do not agree with any discussion of the sovereignty issue is a U-turn, if he has changed his mind let him say so, but at least he should not change his mind and pretend that he has not. So, on the question of open agenda dialogue they countenance discussion on sovereignty or subscription to open agenda dialogue meant nothing, or was not an honest statement of the natural meaning of those words which they cannot have been at the time and then another reason why the hon Member cannot seriously maintain the position that he maintains today is that, has he forgotten and even if he has forgotten does he hope and expect everybody else also to forget the speeches that he used to make at the United Nations in 1992, 1993, 1994, and 1995? 1995 was not in the dark ages of his first term of office. In October 1995 which was the last speech that he made in the United Nations as Chief Minister it was only a few months before he lost office. To the very end of his tenure as Chief Minister of Gibraltar he was going to the United Nations saying, "*...of course I am willing to take part in dialogue with Spain, of course I am willing to discuss the decolonisation of Gibraltar with Spain I just want it done.....*" *[INTERRUPTION]* .....because I do not wish to accuse the hon Members of knowingly misleading the House and those that may be listening to these proceedings I accept that hubbub as a formal challenge to the Government to prove the statements that I have just made and I accept that challenge. The Government will now publish verbatim texts of the Leader of the Opposition speeches in the United Nations which will more than demonstrate not just the accuracy of what I am saying to the House, I cannot do it right now because I do not have my United Nations papers with me, but I will publish them which will demonstrate not just the

accuracy of what I am saying about what the hon Member used to say but also why the position that he maintains today is completely and diametrically opposed to the one that he used to maintain when he was in office. I accept the hon Members' challenge and the Government will now proceed to publish that documentation. *[INTERRUPTION]* Then I will publish them again, presumably he does not worry, if his hubbub was anything other than a nervous reaction *[INTERRUPTION]* Well the words will mean what they mean, they say what they mean, and everyone will be able to read them in glorious technicolor. So the Government can accept a formula of words of the sort that I have read out which we believe are accurate and we believe that the people of Gibraltar do not want sovereignty negotiated and indeed I think that is the position across the floor in this House, neither the Opposition, nor the Government, nor the people of Gibraltar want to negotiate sovereignty in the sense of sitting down and brokering a deal based on conceding to Spain any share of the sovereignty of Gibraltar. That is the position of most political parties in Gibraltar it is certainly the position of the Government and therefore we have no difficulty in saying so but we cannot accept, for all the reasons that I have just been describing, his proposed amendment to paragraph 7. My paragraph 7 reads:

> *" Repeats the statement made in its motion on the 25th March 2002 of support for Gibraltar's participation in reasonable dialogue."*

He wants to put:-

"*...In which the issue of sovereignty is not discussed."* The Government, no it would be worse, I hope that the hon Members were not suggesting issues thereby recognising that there is more than one issue of sovereignty. The Government will not use language which acknowledges that there is more than one issue of sovereignty for reasons that he very well knows and I believe supports.

Mr Speaker, the Government will not as I say agree to a formula of words which breaches the Government's pro-dialogue policy. The hon Member says that it would be nice to keep a unanimous position in the House and that has a price tag. Let me tell the hon Member that although unanimous positions in the House are welcome when they are possible the Government are not willing to purchase that degree of unanimity on the basis of being pushed into policies which the Government believe are not in Gibraltar's interests and it is not just the Government that believe it is not in Gibraltar's interests for Gibraltar to be seen to be adopting a dialogue rejectionist line. The hon Members will have seen the three early day motions recently posted in the House of Commons and one of those motions supported by a list that reads like the 'Who's who of Gibraltar's friends in the House of Commons" calls for the British and Spanish governments to end talks on joint sovereignty and to enter constructive dialogue with the Government of Gibraltar. The Gibraltar Government firmly believe and will not budge from the position that it is not in Gibraltar's interest to be seen to be in a position where we refuse to take part even in what we are calling reasonable dialogue. We believe that it is handing a present political presentational gift to both London and Madrid on a plate and why should we do that when the position is that the reasonable position is ours and the unreasonable position is theirs. Let me try to illustrate it to the hon Member this way. He says, "*....we must stop saying that we are willing to take part in reasonable dialogue because it is now crystal clear that the only dialogue possible with Spain is for sovereignty."* There is a difference which he refuses to recognise and this is one of the argumentative lack of logic and rationale that I described. There is all the difference in the world does he not understand it? Between it being the case that Spain is not interested in dialogue unless it is for sovereignty on the one hand and Gibraltar saying, "*....we are not even willing to take part in reasonable dialogue."* I can only explain the position. If the Opposition do not wish to understand it let them not understand it. What I am telling them is that they are not going to persuade the Government of their view. It may well be true that the only dialogue in which Spain is interested is about sovereignty, it remains to be seen. The evidence supports the hon Member's

contention. The recent evidence supports the hon Member's contention that the only dialogue in which Spain is currently interested is in dialogue in which there is parallel progress on sovereignty. The fact that that is the case is not a reason for Gibraltar to say we are not willing to take part even in reasonable, as we define it, dialogue. The consequences of Spain's position is that reasonable dialogue is then not possible and therefore will not happen but there is all the difference in the world between Gibraltar saying, "…. *I am not going to dialogue because Spain's position is unreasonable, Spain's position amounts to bullying blackmail and Spain is not willing to take part in reasonable dialogue because she requires me to make concessions before I get to the table,"* there is all the difference in the world in international political terms between saying that on the one hand and saying on the other *"I am not willing to take part in reasonable dialogue"* even as I define reasonable dialogue because I am now accepting Spain's definition of reasonable dialogue and I do not surrender to Spain the right to decide what reasonable dialogue means. He is willing to abrogate to Spain the power to define what reasonable dialogue is, I am not and because I am not I am not willing to say, "….*Spain I accept your definition of reasonable dialogue and therefore I am not willing to take part in reasonable dialogue."* I say, "reasonable dialogue is this, if you are not willing to take part in dialogue on this definition of reasonable dialogue do not talk to me" but I am not standing in a position which anyone can say is rejectionist of dialogue. I am no more willing to reject dialogue than he was when he was Chief Minister and he can try for as long as he likes to force the Government into that trap. It is clear to the Government that almost everything that he does is designed to force the Government into where he would like to see the Government for extraneous reasons which is in a position of rejectionist of dialogue and the Government will not do it for two reasons, principally because we do not believe that it is in Gibraltar's interests to be rejectionist even of reasonable as we define it dialogue and secondly because we think we have a mandate, two mandates, for reasonable dialogue. The idea that a party that has been rejected twice by the electorate should seek to impose on a Government that has been accepted twice by the electorate its policy on dialogue at the expense of the one that we have twice been elected with, is obscene, it is bizarre in parliamentary and democratic terms. Therefore the Government will not accept their amendment to paragraph (7), we will accept the modified amendment to paragraph (3), and if in those circumstances the hon Members do not wish to vote for my proposed amended motion then the Government will pass it using their own majority in this House.

HON J J BOSSANO:

Mr Speaker, it is not obscene and it is not bizarre for this parliament to hear the views of the Opposition. What is obscene and bizarre is the mental quirk in the mind of the Chief Minister that reduces debate in this House to the level where the only way that he thinks he can persuade people that he is right and we are wrong is by doing what presumably he did when he was a prosecuting lawyer which was to try and intimidate witnesses by calling them names. Once again today we have been subjected, yes, I have not on this occasion hurled any obscenities at him, I think the only one occasion when I described him using a particular adjective he thought that was obscene but today I have been very moderate in my language I do not think there has been anything obscene in anything that I have said but of course what we have is the complete disregard not just for logic we may disagree who is more logical him or me, the complete disregard for intellectual honesty and integrity on the part of the Chief Minister. I have not brought a motion to this House seeking to impose our policy on dialogue having lost two elections or him having won two elections. The original motion does not require the Government to give up anything, or sacrifice anything, or accept anything. They have chosen to introduce the question of dialogue themselves in an amendment which was completely unnecessary. Had they not done it we would not have had once again to have a row in this House when we are supposed to be doing what the people want us to do which is to reflect the unity of the Referendum. The Referendum was not asking the people of

Gibraltar what do you think about reasonable dialogue? So why do we have to have "*reasonable dialogue"* introduced in a motion in which we are saying how happy we are, how proud we are, of our people for turning out in such large numbers to reject the principal of sharing sovereignty. Why could it not be left there? And then the House would have come out with a united single voice, the voice of the House like the voice of the people saying no to the sharing the principal of sovereignty. But no he has to come back and say, "*..ah yes but we want to go along with reasonable dialogue."* Well, bring a separate motion on 'reasonable dialogue' but do not prostitute and dilute the Referendum result.

Then we had this nonsense of saying "*I am going to publish your UN speeches,"* as if my UN speeches were kept in a secret file which he has and the rest of Gibraltar does not know. They were all shown on television the same as his are and they were all published at the time the same as his are and if he wants to talk about changes he started life in this House defending in 1991 the Brussels Process on the terms that it was going on before 1988 as being reasonable and safe. "*If it was reasonable and safe for Sir Joshua Hassan it should be reasonable and safe for Joe Bossano,"* that is what he used to say. He stood in this House before he went to the Chamber of Commerce and he said he would not go to talks with Spain if sovereignty was on the table. Is that in conflict with open agenda or is it not in conflict with open agenda. *[Interruption]* Yes, and that was quoted and he did not deny it when it was quoted in the Chronicle's report of the proceedings of the House the following day. He did not come out saying, "*I did not say that."* He said, "*..there is now no difference between the Government and the Opposition on Brussels because I will not go if sovereignty is on the table."* And now he says we are trying to bounce him into giving up the policy on which he has won two elections which is 'attendance under Brussels' so that he has to vote on a motion which requires him to reject discussions of the issues of sovereignty which is what Brussels requires him to do. He is trying to convert the amendment into saying, " ....*no, no, no we do not recognise that there are issues of sovereignty,"* one cannot support attendance at Brussels and not recognise that there are issues of sovereignty because that is the statement which creates the process which one supports, we do not support the issues of sovereignty but Brussels does, the United Kingdom does, the Spanish Government does, the United Nations does, the European Union does, all of which are unreasonable because that is not reasonable dialogue. If the Chief Minister thinks that by saying we are being unreasonable all those people are going to understand that to him '*reasonable*' means one thing and to the whole of the world *'reasonable'* means something else all I can say is that that defies any kind of logic. He would have to go to the United Nations and say, "...*when I say reasonable dialogue I mean dialogue which does not include negotiating with Spain on sovereignty notwithstanding the fact that I am required to discuss the issues of sovereignty in the Brussels Process which I am very happy to go to."* If he does not think that participating there involves negotiating sovereignty why does he want a veto? If all he is going to discuss is friendly European neighbourly relations without sovereignty as a quid pro quo what is the veto for which has stopped him going there what is it that he wants to veto flights to Malaga, that he wants to veto the ferry from Algeciras, that he wants to veto more telephone lines? He wants the veto because he knows as well as I do and as well as 99.87 per cent of Gibraltar does now, because we have been using the argument that Brussels was a sell out to Spain from the day it was signed, we voted against it in this House because we said then what Jack Straw has said on the 12th July. The debate we are having and have had should no longer be necessary because throughout the years that the AACR supported Brussels they supported it on the premise that the UK interpretation and the Spanish interpretation were not the same and that in fact those who rejected Brussels were rejecting it because they were accepting the Spanish interpretation of the text, there are no longer two interpretations of the text there is only one. But none of this is necessary in this motion. None of this is necessary because we have not brought a motion to the House to bounce the Government into rejecting Brussels let them continue to defend it and we will continue to attack it and let there be two positions in this House. They have

made it necessary because they are trying to bounce us into going along if the context of a motion that refers to the rejection of the principal of sharing sovereignty one then goes on to say, *"...but we want to go along with reasonable dialogue."* What the hell does it mean? What does it mean to anybody else? I will tell the House what it means, it means that the element in Gibraltar that still hopes for a deal with Spain but not this particular deal not the Straw deal but some other deal, maybe that door is the door that the Chief Minister is trying to keep open because the people that want to see that door open vote for him and will not carry on voting for him if he closes the door. That is what this is all about.

I regret Mr Speaker, that this should be happening, we should not be having this debate, I should not be getting angry with the Chief Minister, he should not have said certain things and it was totally unnecessary all he had to do was to amend the original motion as I brought it to the House without bringing in the controversial question of what *'reasonable dialogue'* means and what it means to go or not to go into talks with Spain and if he says that open agenda means one is willing to discuss and that there is a difference between discussing and negotiating this is just a play on words. An open agenda is an agenda in which anybody can propose anything and anybody can reject anything but the Chief Minister is saying that he cannot reject sovereignty discussions. The Chief Minister is saying, if the agenda is open it means that Spain says, " *I want to discuss sovereignty"* and the Chief Minister cannot say, "*and I do not,"* that is his interpretation of open agenda. The fact that Spain says I want to discuss sovereignty and I can say "*look and I want to discuss my claim to the Campo de Gibraltar because it is called the Campo de Gibraltar* " One can say anything one wants but one is not required to do anything. Under Brussels one is required as part of the bilateral agreement between the United Kingdom and Spain to discuss the issues of sovereignty, one cannot avoid it, one cannot say there are not two issues, that ground has already been conceded and the Chief Minister has been supporting the concession since the first day he became involved in politics in 1991 and then he camouflages it one day one way and another day the other way depending on which way the wind is blowing that is his style. That is the way he operates, fine, let him operate like that but let him not have the cheek to accuse other people of doing U-turns when he has done so many U-turns that he has got us, not just us of the Opposition dizzy with his turns, he has even got Jack Straw, Aznar, Blair, Hain and I presume now De Palacios and no doubt when this is monitored and transmitted they will be asking themselves again what is his latest position now is he being as strong and as negative on any deal still or has he started softening already. He can send whatever signals he wants but he will not get our support for sending those conflicting signals out and I honestly, honestly regret that a motion that I brought to the House some time ago in the expectation that we would be able to reinforce the result of the Referendum with unanimity in this House should have been undermined by the Government coming up with this absurd argument that we are trying to impose our policy on dialogue on the Government when we lost two elections and they won two elections, a policy on dialogue which he claims I have invented today because he says I have just done a U-turn on dialogue and that until now I had a different policy. Then how could I have come when I gave notice to the Chief Minister with the intention of imposing a policy on dialogue which he claims I have invented it today. I did not have it when I gave notice but of course the motion does not mention dialogue at all, the original motion, there is nothing there to push him in any direction. All that this does is it tells the British Government not to carry on with sovereignty negotiations that is all my motion was seeking to do. Why do we have to say "do not carry on with sovereignty negotiations but we want you to carry on with reasonable dialogue" and then we come against the problem of what does *'reasonable'* mean? '*Reasonable*' in the judgement of whom? In the judgement of Jack Straw, Jack Straw is being 'reasonable'. Jack Straw has told the Government that he thinks he is being 'reasonable'. Peter Hain has told the Government that, they have written opinion columns in the Gibraltar Chronicle telling people how '*reasonable*' it is to look for a deal with Spain which gives us a prosperous future which gives us stability and that that can only be as part and parcel of a package which includes sovereignty and that that is 'reasonable'. I do not think

that is *'reasonable'* but I do not know unless we explain what we mean when we say 'reasonable' whether that is going to be the opinion of whoever may be there today, tomorrow, in a year's time or at any time in future. So we are not prepared to go with this unqualified constant references to reasonable dialogue which are unnecessary because I see nothing here, nothing in my original motion not one word, not one full-stop, not one comma that requires the Government of Gibraltar to abandon anything that they want to have in respect of participating in talks with Spain. There is nothing there, it does not call on the Government of Gibraltar to do anything except to say to the United Kingdom, "*..the people of Gibraltar do not want any further sovereignty negotiations with Spain."* Is that not the case? Is it the case that we are not talking about whether shared sovereignty is the sharing of the 100 per cent and joint sovereignty is the 50-50 we are saying the principle of sharing sovereignty that is what we are being asked and I have voted against the principle of sharing sovereignty and the principle of sharing sovereignty means for me not just sharing 100 per cent it means that if tomorrow the deal was we give Spain 1 per cent sovereignty and we retain 99 per cent that would still be in breach of the principle of sharing sovereignty. The principle is that we are not prepared to see in any shape or form the Spanish flag over Gibraltar or the Spanish State having any say in our affairs. At the same time everybody in Gibraltar that believes in that has also believed that it is good for us and good for the Campo Area that we should have good neighbourly European relations. We do not need to be saying in the context of a motion about sovereignty anything about dialogue because it is capable of being misunderstood by people who wish to misunderstand, wish to misrepresent it and is only capable of being there to give comfort to the 'Palomo' element in Gibraltar which were persuaded in this Referendum when the Chief Minister was urging a 'No' using different arguments from mine. He was saying there are people in Gibraltar who want a deal with Spain but this is not the right deal and this is not the right way to go about it and we must stop the joint declaration because the joint declaration at one stage he said was impossible, at another almost impossible for any Government to participate in the negotiating process. This is Brussels II which is worse than Brussels I. All those things that he has said are indications of a willingness to sit down with Spain to discuss the future of Gibraltar. If he wants to publish speeches let him publish his own ones, the ones where he says in answer to questions from the Committee of 24, " *....yes I think realistically we are not going to be able to decolonise Gibraltar without sitting down with Spain and getting their agreement." [HON CHIEF MINISTER: That is what you told them not I]* No that is what he told them in answer to a question when he went along with Willie Serfaty and they asked him the question and Willie said that he should answer it and that is what he said. *[HON CHIEF MINISTER: No]* Yes! Mr Speaker, let us all publish everything we have all said but to publish all his contradictions, all his shields all his U-turns would need from our perspective that we should ask for a supply of various boxes of paper from the House because it would require several volumes to keep up with the U-turns of the Chief Minister.

As far as we are concerned we will not support an amended paragraph (7), we regret deeply that a motion intended to show that we are united on the Referendum result should have been distorted and derailed by the Chief Minister who seems to be paranoid that I am trying to bounce him into a situation against Brussels. As far as I am concerned if he believes that the people of Gibraltar will support him participating in dialogue in which sovereignty is discussed good luck to him he will find out what it is like if he ever goes there with his voices, his vetoes, his dignity, his flags and all the rest of the paraphernalia with which he tries to obscure the issue and throw up smokescreens so that his true intentions are not revealed.

Question put on the amendment to the amendment of paragraph (7). On a division being called the following Members voted in favour:

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 following hon Members voted against:

The Hon K Azopardi
The Hon Lt Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon A Trinidad

The amendment to the amendment of paragraph (7) was defeated.

HON J J BOSSANO:

Mr Speaker, on the amendment that I proposed to paragraph (3) I am happy with the reformulation of words suggested by the Government.

MR SPEAKER:

All right.

HON J J BOSSANO:

We can take the amendment as reading as was suggested on the question of the people's views against sovereignty negotiations.

HON CHIEF MINISTER:

Mr Speaker, let us be clear. It appears by what the hon Members have said that they had no intention of voting for the amended motion. If they have no intention.....

HON J J BOSSANO:

No. What I said was that if the Government did not accept the qualification of reasonable dialogue we have proposed then we would want the amended motion to be taken clause by clause so that we can vote against paragraph (7) and in favour of the rest.

HON CHIEF MINISTER:

The Government are not willing to do that.

HON J J BOSSANO:

The Government are not willing to do that? Then because the Government are not willing to do it I want to make it absolutely clear that the responsibility for not being able to achieve unity on six out of seven points rests entirely with the Government who prefers not to have a united view of the House on the Referendum.

MR SPEAKER:

At this stage we are now on the amendment to the motion which is the Government's amendment.

HON CHIEF MINISTER:

Mr Speaker, the hon Member asks for procedures which are not open to him and then attributes motives to the Government for not.....there is one motion, one either.....

HON J J BOSSANO:

May I, on a point of order?

MR SPEAKER:

Yes.

HON J J BOSSANO:

On a point of order I would ask that the House provide the Chief Minister with the innumerable examples of motions in this House where what I have suggested has been done.

HON CHIEF MINISTER:

I cannot know whether in the past he has succeeded in persuading others that something can be done when it could not be done. It does not make it right, the fact of the matter is, that I am bringing an amended motion to the House that when we come to vote at the end of this debate there will be one composite motion before the House and that either one votes for or against the motion but one cannot say, " *I vote in favour of paragraph 1, I vote in favour of line 2 of paragraph 3 but not in favour of line 4.*" One cannot pick and choose which bits of a motion one votes for and which bits of a motion one is against. One votes for or against the motion and what the hon Member is asking to do is – put it this way, he says it has happened many times in the past. It has never happened since I have been in this House. It may have happened 100 times before I entered this House in a by-election in 1991 it has certainly not happened since, ever. He says like so many of the things that he says it has happened lots of times before. I do not know whether it has happened lots of times before what I can say is it has not happened even once since 1991, I doubt whether it has happened before and if it has happened before that does not make it right. Where does it say in Standing Orders that one can do this?

MR SPEAKER:

I will decide.

HON CHIEF MINISTER:

Mr Speaker, the motion is one motion and once we come to vote we are voting on one motion. This is a proposition which has seven numbered paragraphs. We could remove the numberings altogether and then one would have to do it by reference to, "I vote for the whole motion except for line 26." The fact that there are paragraph numbers does not alter the nature of the document that is being voted on. Either one supports the Government's amended motion or one does not.

The hon Member obviously enjoys what he calls *'a good row'* it is in the tradition of Anglo-Saxon parliaments that there should be good rows but if he wants a good old fashioned row we are not frightened of a good old fashioned row but at least he should provoke good old fashioned rows on the basis of fact and truth and not build a faked row on the basis of statements that have not been made in this House. No, Mr Speaker, the problem with the hon Member is that he is the master of distortion of what other people say. Yes the hon Gentleman all his political career has been the master of distortion. I have not called him names which is the opening remark upon which he based the whole tirade about rows and the terrible man on the Government side. No I have not called him names I went to the considerable trouble so that he would not have his sensitivities assaulted to say that these were comments on his arguments not on him. I said that his arguments were irrational, incoherent and illogical and then I went on to explain why and I have not said which is the other pillar on which he builds his little fake row, I have not said that it is obscene and bizarre for the view of the Opposition to be heard in this House, *" .....the problem with the Chief Minister is that he will not tolerate anybody else's views. How can he say that it is obscene and bizarre for the Opposition's views to be heard?"* Who has said that it is obscene and bizarre for the Opposition's views to be heard? What I have said is that it is obscene and bizarre for the Opposition to try and have their views reflected in a motion in the name of unanimity. The hon Member launches his tirade on two false invented premises, one that I called him names which I have not, two that I have said that it is obscene and bizarre for the views of the Opposition to be heard in this House and then went on in his usual diatribe of personal insults including the fact that according to him it is alleged that when I was a practising barrister and specifically when I was acting for the prosecution that I used to call witnesses names. That I used to intimidate witnesses and call them names but what is the matter with the hon Gentleman has he taken complete leave of his senses or is he simply so rattled by the arguments that he faces that he just looses control, looses complete touch with rationality and reality. When I have said that expecting the Government who are elected with the mandate of two terms on reasonable dialogue in the interests of unanimity to abandon that policy to accept if a contrary view when pressed by the Opposition that has twice been rejected with their policy, the answer by a visibly out of control Leader of the Opposition is that when I was a prosecution lawyer he thinks I used to intimidate witnesses and call them names. I believe that he has just lost control, I regret to have to tell him this I believe that he just looses control of himself when he finds himself on his feet in a debate.

Mr Speaker, the only Chief Minister of Gibraltar, for the record, and since he raises the question of hearing the Opposition's voice in this House or not hearing the Opposition's voice in this House, let us recall that the only Chief Minister in the political and democratic history of Gibraltar that has tried to silence the Opposition because he did not agree with their views is him or does he not recall that he used to formerly refuse to answer Mr Cummings' questions in the House with the statement, *" I am not answering your questions because I do not think that you should be in this House at all."* How dare he with that track record in this parliament have the audacity to stand up and suggest that we say or do anything which suggests that we are intolerant to the views of the Opposition. It is just another example of the hon Member's distortion of fact, poor recollection of what has happened in the past, and U-turns. Another example of the hon Member's U-turns. He is the only Chief Minister with the appalling record of trying to censor not just the views of the Opposition in this House but of even refusing to recognise their right to be in the House because he disagreed with their policies. That is obscenely and bizarrely not wanting to hear the views of the Opposition what he did not anything that Government have ever done in this House.

Mr Speaker, the hon Member says that they have not tried to impose their policy on dialogue and then goes on for 15 minutes about how it was not in their original motion. This is a debate between grown-ups, the fact is that once the Government had decided that they want to, the Government still have a majority in this House. The Government decide that they want the motion to

reflect not the Government's position on reasonable dialogue, the position on reasonable dialogue adopted by this House unanimously as recently as March this year. The motion in the House in March this year says exactly what we tried to insert in paragraph (7) and it is not just the Government's view. The representative bodies council all support reasonable dialogue. The banner behind which 25,000 people of Gibraltar were happy to march on the 18th March this year said, "Yes to reasonable dialogue." The problem with the hon Member is that he wants to convert his minority views into the consensus and he has failed twice to do it and he will continue to fail. Everybody in Gibraltar supports the principle of reasonable dialogue only he now does not. Now, because when he and Dr Garcia told the people of Gibraltar, "*Of course open agenda dialogue...,*" how is that consistent with voting against the sentence that simply calls for reasonable dialogue. They have now gone firmly on record that the GSLP/Liberal alliance parties are against even reasonable dialogue. Fine, I think it is very helpful that that should finally be clear.

Mr Speaker, the hon Member appears to have difficulty accepting that words in the English language have a meaning and that when people use them for that meaning he cannot attribute to them motives which attach to a different meaning to that word. Why does he think that it dilutes the Referendum result for the Government to say, "....*a, b, c, d, e, f, and g*" which is much stronger than what he wanted to say about the Referendum result, much stronger, and then he says, "....*oh and by the way this has not changed Gibraltar's position from where it was on dialogue before the Referendum.*" The only reason why he might find that bad, diluting or annoying to him is if he was trying to achieve what he claims he was not trying to achieve. In other words, pretend that the Referendum result means that Gibraltar has changed its position on reasonable dialogue and if that is the position and if it is not there is no logic to his objection to it but if that is the position he cannot now innocently stand up and say, "....*oh we were not trying to hijack the Government's policy.*" So which is it? He is either trying to undermine the Government's policy on reasonable dialogue or there is no connection between the Referendum and reasonable dialogue in which case what is the harm? I think it is good and I have tried to explain why I think that it is good but given that he does not agree that it is good at least what is the harm in saying, "...*oh and Gibraltar's position on dialogue is not altered by anything to do with the Referendum,*" which is the Government's position so his position is either different or the same as the Government's. I think that it is different and he is trying to reflect that difference not in anything that he had in his original motion I accept but in the amendment that he proposes to paragraph (7) once we have proposed it and what I have said is not a comment on his original motion as he pretends, what I have said is a comment on his amendment to my amended paragraph (7). It is clear that his amendments are calculated to eliminate the possibility of advocacy for dialogue by trying to equate first of all negotiations with discussion and then by trying to assume the position that dialogue is not reasonable if Spain is even free to raise the question of sovereignty because actually when he went on to describe what he thought reasonable dialogue meant and does not mean I agree with him. I agree entirely with him. The difference between reasonable and unreasonable dialogue is one in which one is able to protect oneself not have to make concessions of one's case before one gets to the table and when one gets there just discuss everything without a commitment. Not just without a commitment as to end game but without being able to have an end game forced upon one after one has arrived at the table which is what we want the veto for and the own voice for. So, we have to say apparently we have the same definition of reasonable dialogue and I would say to the hon Member it is not true that I have ever said that we would not go to dialogue if sovereignty was discussible. I have always said that in an open agenda dialogue of course Spain had to be free to raise the question of sovereignty so long as we were free and could safely and effectively express our own view and then either move on or not. That would then be Spain's choice. What I have always said is that of course I would not go to dialogue in which sovereignty was on the table for negotiation. The hon Member wants to simply eliminate political reality from the equation and I am sorry it may be convenient for him to blur

all these edges and eliminate all these nuances and alter the natural meaning of words because it all pushes Gibraltar in a direction that he wants them to go in but he is wrong. People are entitled to rely on the natural difference in meaning between words and there is an obvious difference between an open agenda discussion in a context in which one is not committed to any objective and which one can prevent agreements on through a veto, there is a difference between that and saying, "*..all right I will go along to negotiate sovereignty in accordance with the end game that you have predetermined.*" Does he not understand that there is a valid difference to draw between those two positions? Nor is it true that I have said that there is no difference with the Opposition on Brussels because I will not go if sovereignty is on the table. No, what I have said was that there was no real practical difference between the Government and the Opposition on Brussels because the Government would not go to Brussels unless our conditions for participation were satisfied. The hon Member's memory seems to be very good when he wants to say that he says something and very poor when he wants to recall of things that I have said. That is exactly what I said that there was little difference between the Government and the Opposition on Brussels because the Government's position was not as he likes to constantly repeat because he thinks it makes good political material that we support Brussels or we defend Brussels, we neither support nor defend Brussels. What we have said is that if what is objectionable about Brussels, what is unsafe about Brussels is corrected which they would be if our conditions were met, then we would be willing to take part in talks and we have said whilst those conditions are not met there is no difference between the Government's position and the Opposition's position because neither of us support going to which he replied in a subsequent press release, "...there is still a difference because we would not go even if his conditions were met." Does he now remember the exchange? That is exactly how it happened. I say this not because it has any relevance to the issues that we are actually debating on the motion but simply to correct yet another distortion of fact as represented by the hon Member in his address. It is all too often in the hon Member's political style to suggest that somebody has said something that they have not said. To represent somebody's position as different to what it is and then build a case on that false foundation. It is all too often his political style and certainly whilst we have the opportunity of rebutting that style in this House we are not minded to let him get away with it, sometimes he gets away with it publicly in press releases because frankly the Government do not have the time or the inclination to report to respond and to join issue with him on each and every press release and each and every television interview that he gives but certainly in this House we have no intention of letting him get away with that defective debating style.

Mr Speaker, the hon Member shouts in complaint, "*Why bring the question, the controversial question of reasonable dialogue?*" The question of reasonable dialogue is only controversial in his mind. It was not controversial on the 20th March when he voted for a motion in which the House said precisely this. It was not controversial for all the politicians that signed the Declaration of Unity, all past and present Members of the House signed the Declaration. It was not controversial to all the representative bodies that also signed the Declaration of Unity so it is not controversial in this House, it is not controversial outside of this House, it is Government policy, 25,000 Gibraltarians have marched behind a banner saying precisely this and he accuses us of introducing controversial issues. It is not a controversial issue and it does not become a controversial issue simply because he describes it as such. No amount of bluster will succeed in concealing the truth, in conceding the reality, that the hon Member used to defend precisely the same dialogue open agenda willingness to sit down with Spain on a reasonable and safe term admittedly with the exception of one speech in which let us say it was a slip of the tongue, I am willing to accept, knowing what his anti-Brussels trajectory has been from the outset that if in one speech he says something which is capable of sounding as being willing even to take part in Brussels it was a slip of the tongue particularly as it was in the one speech that he ad-libbed and did not have a prepared text. So leaving to one side the question of whether he would or would not under Brussels, he has

gone to the United Nations time and time again to say what I have not gone to the United Nations to say and that is that the decolonisation of Gibraltar needs to be negotiated with Spain, this is not deniable. All I have to do is go back to my office now pull out the text of his speeches, hire a page of advertisements in the Gibraltar Chronicle and publish it. I am not going to do that but I am certainly going to publish it but all the noise suggesting that this is not true, there they are and of course they are there in the public domain. I have not said that the hon Member says things now that he used to say in UN speeches that were not published in Gibraltar, another distortion attributing to my mouthed words that I had not uttered. What I said was that he hoped that people would forget that is what he said in 1993 not that people did not in 1993 hear him say it. That might be why he lost the next election not that people in 1993, 1994 and in 1995 did not then hear him say it but that he was hoping that they would by now have forgotten thereby freeing him to say things today which are incompatible with the things that he used to say then. That is what I said, nothing about the speeches are published as if I had suggested that his UN speeches were not published another tweaking of what I have said in order to allow him to defend himself on a ground that he has not been attacked on, another example of distorting my words in order to build an argument on a completely false foundation.

The hon Member asks rhetorically I suspect because I do not suppose he is interested in the real answer why do I want a veto? Well, I do not want a veto for any of the reasons that he said I have said that the Government's conditions for participating in dialogue apply to any and every process of dialogue. I want a veto so that the elected Government of Gibraltar can prevent the United Kingdom and Spain from reaching agreements which are not to Gibraltar's liking or which violate the political rights of the people of Gibraltar and that is necessary whether the dialogue is inside or outside the Brussels Agreement or are we saying, which certainly the Government are not saying, that if they tore up the Brussels Agreement and set up something else we would then be willing to go along without our separate voice and with a UK and Spain free to agree bilaterally whatever they liked. Certainly from the Government's point of view the answer to that is obviously no so that is why we want the veto not because we concede that the predetermined objective of the Brussels Agreement is joint sovereignty, or sovereignty or Spanish sovereignty and we need the veto to frustrate what we accept is a predetermined objective. In fact we have it in writing from the British Government that the Brussels Agreement is not and this is not predetermined to result in Spanish and these are not things that say, *"..ah then we can support it,"* or *"then we can defend it"* no, these are not reasons which enable us to defend or support the Brussels Agreement which we do neither, these are reasons which allow us to formulate when and whether it would be safe for Gibraltar to take part in Brussels Agreements talks. *"What does he want reasonable dialogue for?"* Well, I want reasonable dialogue for reasons which are a lot less bad for Gibraltar than what he wanted reasonable dialogue for in 1992,1993,1994 and when he used to send all those emissaries to Madrid to see if he could change the Spanish Government's view on their refusal to speak to him and when he used to say in the United Nations all these things that he used to say. I want reasonable dialogue and there is no point the hon Member making statements to attribute to us other motives. I want reasonable dialogue for all the things that he thinks he says reasonable dialogue for, for neighbourly relations and everything else not in order to sit down to negotiate the sovereignty of Gibraltar which is what he has equated *"a willingness to reasonable dialogue"* to mean a willingness to sit down and negotiate sovereignty with Spain only because Spain's definition of reasonable dialogue requires that and we say certainly not, that is not our definition of reasonable dialogue. That is not what we want reasonable dialogue for and that is not the reasonable dialogue that we would take part in and if that is the only dialogue available then it will not happen but it will not have happened not because Gibraltar says it is against reasonable dialogue but because Gibraltar will say Spain is the one who does not want reasonable dialogue and that is where the Government judges Gibraltar's interests are best located.

Mr Speaker, another of the mythologies that the hon Member seems obsessively concerned with perpetuating is this idea that the Government or I in particular do constant U-turns. Read every public statement, start with the first dialogue press release that the Government issued after the 1996 elections, I could legitimately say they cannot take me back further than the last time the people of Gibraltar elected me but I am happy to subject to a stricter test than that, go back to all our statements, for example, I will give them the dates the first major dialogue statement I think was dated October or November 1996, and he will see that from then until today and tomorrow and the day after because it is not going to change what we have been saying about dialogue, about the terms upon which we would take part, upon the terms upon which we would not take part have not changed one punctuation mark. I cannot do better than point him in the direction of historical records that I cannot now alter and if I thought that the historical records did not reflect it would hardly be pointing them out to him. Unlike him I do not just say, *"Mr Speaker, this has happened hundreds of times in the past,"* something that no one can check, no, when I defend myself I point to written evidence of what has happened and what I have said and invite whoever to go and look at it and they will see that there have been no U-turns not a number of U-turns or a position that changes so often that not even the Spanish and the British know what it is, no U-turns. No changes of position because we had a reasonable position from the beginning and one does not change reasonable positions in the face of unreasonable positions by others and because our position has been reasonable and defensible from the outset we have not had a need to change it and the position on dialogue that we have explained privately to the British Government in all our ministerial meetings with them, in all our letters, in all our meetings with the Governor have always reflected that position and only that position. So, he can continue to if he wishes to but the people of Gibraltar have already told him twice that they do not agree with him but never mind he can continue to repeat the view that the Government are constantly changing their position on dialogue. Not only is the Government not constantly or at all changing their position on dialogue, the people who actually have changed their position on dialogue is them but let it be recorded that after today's debate it is the indisputable position of the hon Members in Opposition in both political parties represented that they are opposed even to reasonable dialogue and that they no longer subscribe to open agenda dialogue because reasonable open agenda dialogue which is what the Gibraltar Government are interested in is precisely what he described as reasonable open agenda dialogue, dialogue in which everybody can go and say what they want without commitment and he asked for Gibraltar and I asked for all the area that the Calpe Hunt used to strutter around in those days. So they claim, we claim, and we answer each other and nothing is agreed in the commitment. That is open agenda dialogue with no pre-conditions of the safe variety but he is against even that after today and so I commend the Government's amendments to the House which are not as the hon Member in his blusterous response sought to make out to dilute or undermine the Referendum result. Let us get this clear once and for all because he tries to muddy the waters even on this issue. The Referendum of the 7th November 2002, so why on earth should we want to dilute its effect, was decided upon and called by the Government on the question that the Government wanted to put to the people it was not even the Referendum of the sort with the question or at the timing that the hon Members wanted so for them to constantly suggest that they had suggested it first which was not even true but even if it were what they might have suggested which they did not even suggest first but the only thing that they ever suggested is something very different in a very different time to the one that has actually happened. The hon Member has heard me say before that if the Referendum had taken place at the time that the hon Members were trying to press the Government to do it it would have been a tactical error. I accept that tactical decisions are a matter of judgement they obviously think that it would have been better at that time we think it would have been a tactical error. We would have had all our demonstrations, all our Referendums by October or November last year, there would never have been an advertising campaign because they think that that was a waste of money and they think that that would have left Gibraltar in a best place as opposed to what has happened which is an incremental stepping up of

political pressure through it over a sustained period of time increasing the range of public opinion that had become familiar with the Gibraltar issue and with the arguments maximising the public support for Gibraltar. The hon Members think that that was not the right thing to do. We believe that it was the right thing to do and with the exception of Opposition Members who may take the view that they have some sort of sacred obligation never to congratulate or never to think that the Government have done anything right the only people who appear to think that the Government's campaign so far, we do not even know whether it has succeeded yet, but the only people who believe that the Government's campaign so far has not been effective appears to be the Opposition Members. So, the hon Members have no grounds upon which to believe that the Government would do anything to dilute the result of our own Referendum, what is the hon Member thinking of? What we are wanting to do, which is why the hon Member may be upset, is that we are saying about the Referendum all the things that it means in fact, some of them a lot stronger, there is everything that he wanted to say plus, and therefore our comment on the Referendum is actually stronger than his but what we want to say, which he obviously does not want to say, is that the Referendum does not alter Gibraltar's position on reasonable dialogue. That is why he is upset and that is why the Government have chosen to introduce the paragraph because the Government's position is that the Referendum has not altered their position on reasonable dialogue and the hon Member was hoping to bring about a position where his skewed interpretation of the Referendum had the side effect of also scuppering the reasonable dialogue agenda in Gibraltar. So that is why we support paragraph (7) and he does not but that is simply to recognise the political realities of the differences between us and I do not say to the hon Member that by voting against this motion he is undermining unity. The hon Member knows, I have said it sitting next to him in a television debate that I am not the sort of politician that thinks that democracy is advanced by putting pressure on oppositions to agree with governments or putting pressure on governments to support oppositions. People have the views that they have and they should act, vote and behave consistently with those views, not to trade those views for somebody else's insincerely in the name of so called unity. I do not see why the hon Member if we disagree, we disagree and there is no need to attribute to either of us this sort of guerrilla tactic desire to blow it all out of the water. Without the dialogue paragraph the Government's concern is that people might think that the Government's or Gibraltar's position on dialogue has changed. That is why we have included it not because there was anything in it, not because there was anything in his own motion that required it, but because the Government want to put it in to make it clear to others that the Referendum is an assertion of our political rights, it was a defensive act against the Anglo-Spanish negotiating process of the last 12 months and does not alter the policy position of the Government of Gibraltar. I said to him at the beginning that we wanted to make this into a wider political document for wider use than his own motion was intended to be and we think that that is perfectly legitimate and far from to quote his words, " *prostitute and diluting the Referendum result,"* far from doing any of that this gives the same or a greater degree of ex post facto political interpretation to the Referendum something that the Government decided to convene for that purpose and then goes on to say, "*far from prostituting or diluting the effect of the Referendum and do not think that by forcing us to call this Referendum you have forced us into a more unreasonable position on dialogue that will make it easier for you in the future to criticise us internationally."* That is not prostituting the result of the Referendum that is pocketing the political value of the Referendum without allowing others to make mischief at Gibraltar's expense because of it. So I do not know what the opposite of prostitution is but if there is an opposite to prostitution then I think it is the opposite rather than prostitution. I commend my amendments to the motion to the House.

The House recessed at 12.45 pm

The House resumed at 12.55 pm.

HON J J BOSSANO:

Mr Speaker, I regret to say that nothing that has been said by the Chief Minister in support of this……..

HON CHIEF MINISTER:

Mr Speaker, on a point of order.

MR SPEAKER:

Yes certainly.

HON CHIEF MINISTER:

Mr Speaker, the Government's understanding of the procedure of the House is that there is a mover of the motion, other speakers take part in the debate and then the mover closes and when there is an amendment or even an amendment to an amendment under Standing Orders the same procedures apply to that section of the debate, for example, when the Leader of the Opposition moved an amendment to my amendment, he moved, I answered, he replied and then we took the vote. We have voted on the Leader of the Opposition's amendments to my amendments and that is the correct procedure. What we have now done is that the hon Member introduced his original motion, in my debate in the participation of that I have moved an amendment, the hon Member has spoken to the amendment, I have replied and therefore closed on my amendment and now what we need to do is what we did in his case which is to vote on my amendment to his motion and if that happens that is the motion that there is before the House and there is no further motion for anybody to close on.

MR SPEAKER:

The thing is that your amendment is part of his motion, for example, "*warmly welcomes*" is a repetition so it has not been amended but before……..

HON CHIEF MINISTER:

That is not the point that I am making the point that I am making is that we have to vote on my amendments whether they are small, large, whether they repeat the words warm or does not repeat the word warm somewhere in it we have to vote on my amendments before proceeding further in the debate on the motion as it was originally presented.

MR SPEAKER:

I agree entirely……..

HON CHIEF MINISTER:

Well let us do it…….

MR SPEAKER:

The only thing is that we will take the vote but still the mover will have the last word after the vote.

HON CHIEF MINISTER:

Well the hon Member.....

MR SPEAKER:

That is my ruling.

HON CHIEF MINISTER:

Mr Speaker, it may be your ruling and it will have to remain until such time as it can be dealt with by substantive motion but the reality of it is that it is a ruling which is in complete contradiction to the practice of this House which has been that once a motion is amended by the deletion of all the words after "This House –" and this was a device not invented by me, the practice and rulings in this House has been that when one deletes all the words appearing after "*This House*" and what follows is a new text, then that is the motion upon which we vote. Mr Speaker can say "*ah but I spot the word warmly in both and therefore that is no longer.....*" Fine I will have to bow to the Speaker.

MR SPEAKER:

We will vote on the particular amendments and then the mover of the motion will have the last word.

HON CHIEF MINISTER:

But there is no motion.

MR SPEAKER:

All right so we now vote on the amendment to the motion.

HON CHIEF MINISTER:

No, Mr Speaker, we are voting on my amended motion which is the deletion of all the words appearing after *"This House"* and the replacement with all the language of which I have placed on the table.

MR SPEAKER:

Yes. I am ruling that we take the amendments one by one. All right I now put the question in the terms of the amended motion paragraph (1) those in favour?

HON CHIEF MINISTER:

No, Mr Speaker, with the greatest of respects .....

MR SPEAKER:

Would you like to take the chair?

HON CHIEF MINISTER:

Mr Speaker, I am perfectly entitled to make points of order without Mr Speaker making remarks of that sort. What Mr Speaker cannot

do, at least not relying on anything in Standing Orders, is to treat a motion as if it was the Committee Stage of a Bill. What he can do if he wants to is to say, which is what he started off saying, I want to take each amendment separately but each amendment is every other word not each paragraph number. This is why……..

MR SPEAKER:

Each amendment which does not conform to the original motion.

HON CHIEF MINISTER:

But that is everything. That is every word and every punctuation mark and every paragraph and all the different numbers of the motion. [*HON J C PEREZ: Except warmly welcomes]* Except "*Warmly welcomes"* so we have to vote on every word after the words "*Warmly welcomes"* one word at a time because this is not the Committee Stage of a Bill. Frankly, Mr Speaker of course has in the instant the word and we have to bow to it in that instant but I am sure that Mr Speaker will be as minded as we all are to conduct our responsibilities within this House in accordance with the established rules of the House and not in accordance with just any old practice.

Is Mr Speaker ruling that the voting procedure on a motion is akin to the Committee Stage of a Bill where we approve one paragraph of the motion at a time. Is that the ruling where I am entitled to call for a formal ruling from you about what it is that you are deciding? I now call upon you to make that ruling because Mr Speaker is sweeping out of the window 50 years of parliamentary rules and tradition in this House and is making new rules. Fine he can do that but then the House must agree by substantive motion to change it, so we need to know what exactly is the nature of the ruling that he is making.

MR SPEAKER:

The ruling that I am making is that the mover of a motion will always have the last word whether from one side or the other. This is not a motion, you have a number of amendments to an original motion.

HON CHIEF MINISTER:

There is one amendment.

MR SPEAKER:

A number of amendments.

HON CHIEF MINISTER:

What is paragraph by paragraph got to do with it?

MR SPEAKER:

I was requested by the Leader of the Opposition that he wanted it paragraph by paragraph and I think it is perfectly right.

HON CHIEF MINISTER:

But why paragraph by paragraph and not phrase by phrase?

MR SPEAKER:

I am not going to carry on a discussion. I am putting it to the vote.

The motion as amended by the Hon the Chief Minister was then voted on paragraph by paragraph. The House was unanimous in the first six paragraphs and the Opposition Members voted against in paragraph (7).

HON CHIEF MINISTER:

So now Mr Speaker I want to call a deed poll on the question whether the people are in favour or against the motion which is a division which is the only parliamentary legitimate exercise that could have taken place at this point in time.

HON J J BOSSANO:

Mr Speaker, what is absurd is that the Government should prefer to have a situation where the House does not record in its voting that we agree on six out of seven points in the motion as has been amended and would prefer that instead the House should record that there is no agreement on any of the seven points which is the position he has been trying to manufacture because like everything he does in this House it is done with an eye to the outside world and to the manipulation of information for party political purposes so that he can say that there has been a U-turn by Opposition Members and now they do not welcome the Referendum, they do not express admiration for people this is what he is trying to make that is why he is going to say now I want a division on the whole thing. Fine, we will have a division on the whole thing and we will vote on the division of the whole thing and the reason why we will vote against it if that is what he wants is not because it is good for Gibraltar, I agree with him.....[*Hon Chief Minister: You called for a division.*] I agree with him that it is perfectly reasonable that there should be differences of opinion between political parties and that we can accept and respect different judgements and different interpretations and the party in Government have been elected so that at the end of the day if it is not possible to achieve a consensus then the Government of the day pursues the policy because it has the majority but not being able to achieve a consensus does not mean that we all do what he wants. It does not mean that, he has admitted that the original motion did not seek to rule out reasonable dialogue indeed the amendment to paragraph (7) does not say we will not participate in reasonable dialogue what it spells out perhaps for the first time and in our view necessarily is that we say in the first six paragraphs that for us reasonable dialogue does not include what the Brussels process requires which is the discussion of the issues in the plural of sovereignty. That is required by the attendance at Brussels talks. We are not trying to push him in that direction, we wish if it would have been possible for him not to feel that he had to bring back this question of reasonable dialogue. He feels he needs to do it, well even in his speech in moving the amendment in asking for the support of the House to his amendment it shows the weakness of the nature of his arguments. What has he accused us of when he has just moved the amendments? He has accused us first of all of having a policy of wanting to decolonise Gibraltar by negotiation with Spain. He says, this is not something that was a secret, this is something that was well known because it was in all my UN speeches and I was constantly wanting to do it except perhaps that not under Brussels but that in an open agenda what I wanted to do was to decolonise with Spain. He claims it is not something that he has done although it is possible to bring out the references where it is absolutely clear where he has said "*if we have to do a deal on*

sovereignty with Spain provided the people accept it so be it," so it is acceptable to him. I have never said if the people accept it so be it, I have said my job is to campaign against it, to oppose it and if there is a majority I may not be able to stop it but my job will be to prevent the majority being in that direction. That is the difference between us but not only does he accuse me of wanting to sell out Gibraltar to the Spaniards for eight years and he says I did it in 1992, 1993, 1994 and in 1995 he also accuses me of the opposite. He says that because I am against dialogue I have been rejected twice. Which of the two things that he says have I been rejected for? For wanting to do a deal with Spain or for not wanting to talk to them at all because he has accused me today of both things and he then goes on to say, I am trying to impose my policy against dialogue and foisting on the Government, which is not the case, and then says that having had it rejected twice and having his policy of reasonable dialogue having been supported twice since 1996 is bizarre that we should try and overturn what the electorate have selected. We are not trying to do that what we are trying to do is retain what we think is the purpose of the Referendum and the Chief Minister cannot say as he attempts to say in this House that reasonable dialogue has only one meaning. No, reasonable dialogue does not have only one meaning because the word reasonable is a subjective thing and therefore he may think he is being reasonable and I think that he is being unreasonable and consequently we can say has it been a reasonable debate, well, it depends on which side of the fence one is on. He may think the debate is a reasonable one I think it is an unreasonable debate because it should have been a debate where we identify ourselves with the Referendum. The Referendum which he says is the Government's Referendum and we are trying to hijack it. Perhaps not to hijack it what we are trying to do is take the credit for it. The Referendum which he says is the Government's Referendum and I mentioned in my opening speech that I assumed that when he had thanked the people of Gibraltar in Mackintosh Hall since he was the only one invited to speak on the Referendum result he was doing it for all 15 Members not for the Government alone. The people of Gibraltar have seen the Referendum as the Referendum called by resolution of this House carried unanimously. What is he saying that if a motion is carried unanimously in this House then it is the Government's policy if it is introduced by the Government and the Opposition's policy if it is introduced by the Opposition. That is a complete nonsense to suggest that the Parliament works on the basis not on the nature of the result of the vote but on the question of who introduced it. Is this then the acceptance of the policy reflected in the original motion? Well it is 6/7th because as far as we are concerned we have no doubt that the first six points are not in conflict with the purpose, the sentiment and the content. They may be using different words, they may be expanding some of the concepts but we are happy to see the 6/7th of the motion because that is the same motion that we brought. Even if the position is that the Chief Minister wants the amended motion put to a division and we will then vote against that division and that will enable him tomorrow to go round the world saying how much we do U-turns and how we are contradicting everything. A situation he wants to provoke to further his own party political interest not because he is looking after Gibraltar's interests at all and if he wants to go to dialogue on the basis that dialogue with an open agenda means not just so that Spain can say I want to discuss the issues of sovereignty as is required to do by Brussels but that he says yes to discussing the issues of sovereignty. That is why he will not have those words there and he has to do it. He knows he has to do it. He knows that he has made an important contribution to this Referendum not in the timing but in accepting both that the question had to be about the concept and the principle which is wider than simply saying joint sovereignty because 51/49 is not joint but is still sharing sovereignty [*Interruption*] and the language that Straw used of sharing sovereignty with Spain. Straw then said we could not take a decision because we did not know what the precise nature of the implications of sharing would mean. This is why the Government of the United Kingdom invite him constantly to dialogue in order to shape the result of the sovereignty deal. That is what they have said repeatedly in the House of Commons. He is being invited to a dialogue which is for that purpose and he is saying he is prepared to participate in a dialogue which is not for that purpose. No such other dialogue exists or has existed since the Brussels Agreement was signed. One needs to scrap Brussels first to be

able to have an alternative which does not carry that requirement and if he has not gone for that reason then it has nothing to do with the voice, the dignity, the flag or the veto. If he talks about contradictions and U-turns he has the audacity to tell us we will not find a full stop or a comma difference. Let him look at the tape if he has kept it of his interview on Spanish television where the interviewer said to him "*Mr Caruana is it not a bit hard to be using the word veto?*" and he answered "*me veto I have never used the word veto in my life.*" He had a press conference in September where he had said, "*we are no longer satisfied with a voice now we want a veto as well.*" Everybody saw it…….

HON CHIEF MINISTER:

On a point of order. I want to make it perfectly clear that everything that the hon Member has said in the last minute is factually untrue but like everything else that he says he says the interview of a tape without pointing to which interview, which tape so that I cannot check it. What he has said about the mimicking of that or the reciting of that version of events in an interview is untrue and if parliamentary rules did not prevent me I would use a much harsher word than that.

MR SPEAKER:

It is not a point of order it is a point of personal explanation.

HON J J BOSSANO:

I make myself responsible for the truth and the accuracy [*HON CHIEF MINISTER: Demonstrate it*] and I will demonstrate it and the Chief Minister will then have to retract what he has just said because he will have been proved wrong and if he wants us to use stronger words than are permissible in the Chamber let me say that I am quite happy that he uses whatever words he wants outside the Chamber.[*HON CHIEF MINISTER: You use them inside the Chamber*] I do not think I do. When I introduced this motion to the House today I did it frankly in the expectation that it would not finish the way that it has finished and it is not the same to say in parliamentary democracy people get angry with each other and they have debates but let us get angry and have debates when we cannot avoid them and this is important, it is important for Gibraltar. The people of Gibraltar of all different political persuasions want to see the House, that called the Referendum wrapping-up the issue on the terms that are consistent with being able to respect each others position. The Chief Minister moves from implying constantly things that are not true to the rest of us and then does not want to be answered on the same terms. I would not be saying these things to him if it was not that he thought it necessary in order to defend his position which is his style of doing things. When he wants to defend somebody he rubbishes everybody else because that is the only way that he can shift public attention from what he wants and that is the weakness in his position in the defence of Gibraltar and it is those weaknesses that he does not want to have pointed out. I would not be pointing them out if he had not moved the ground from the Referendum to the dialogue. The people of Gibraltar he thinks want to subscribe to reasonable dialogue. We all went behind the banner but how can he be so dishonest as to say that we all went behind the banner and we all subscribed past, present and current Members of this House to the word reasonable dialogue when he knows that in all the toing and froing before that text was agreed it was simply agreed in order to keep him happy. There were plenty of other people that did not want it. [*HON CHIEF MINISTER: You signed the declaration and you did not mean what you were signing?]* No. I did not sign a declaration that I did not mean, what I did in the interest of Gibraltar was go along with the things that the Chief Minister wanted but let us be clear that he is the one that wanted it there our view was we did not need to have the word "*dialogue*" being introduced in the bridge at Glacis Estate, we did not need to have it put in the motion that we all supported in this House. He

insisted that it had to be there and because they are the majority and they are the Government and it is important to them on the basis of reaching a consensus we went along with it. This time we thought it was totally unnecessary to bring back the bad old penny of dialogue again on the table especially when he knows that he is being completely intellectually dishonest in saying "*reasonable dialogue*" is something that if we do not support Spain will go round lobbying and making us to be the unreasonable guys. [*HON CHIEF MINISTER:And our friends in the UK not Spain*] Our own friends in the UK will support reasonable dialogue because it is the policy of the Government of Gibraltar and if he went to Brussels tomorrow, as Sir Joshua did, they would support going to Brussels and when I was there they supported the boycott. Our friends support the policy of the Government, it has to be like that. It would be wrong for our friends in parliament other than at an individual level like Lindsay Hoyle the Chairman of the group, the Chief Minister knows, he was standing next to him in the reception in the Labour Party when he said, "*it is time to scrap the Brussels Agreement*" and we both applauded. I want it he does not, but we applauded Lindsay Hoyle when he said it. Our friends agree that the Brussels Agreement is now exposed for what it is. Many of the things that the Government say on different occasions would suggest that in fact they do not want the Brussels Agreement but then they take one step forward, two steps back and that is what we feel is contrary to Gibraltar's best interests. We can have these debates without accusing each other of things but the Chief Minister has got to understand that it is his choice as to what should be the temperature, as to what should be the accusations, as to what should be the language. We will give him as good as he gives out if that is the way he wants it. It is not good for Gibraltar, it is not good for this parliament but if he thinks that he can browbeat people and then complain that he is being browbeaten when he gets some of his own medicine back then he has got another thing coming. Mr Speaker, I regret that the unanimity has covered six out of seven points. I wish it had been possible to do it on all seven.

The Question was then put on the motion amended by the Hon the Chief Minister and which read as follows:

" This House:

(1) Warmly welcomes the result of the referendum held on the 7th November 2002 in which, by a majority of 98.97%, the people of Gibraltar rejected (as this House had unanimously recommended by motion on 18th October 2002) the principle that Britain and Spain should share sovereignty of Gibraltar;

(2) Expresses its admiration and satisfaction at the high turnout, and the clear and dignified statement by the people of Gibraltar of their commitment and resolve to uphold our political rights as a people, including the right to self determination, that is, the right to freely and democratically decide our own future;

(3) Considers that the sovereignty of Gibraltar is not negotiable contrary to the wishes, and without the consent, of the people of Gibraltar, and that the people of Gibraltar do not want any degree of Spanish sovereignty over Gibraltar negotiated;

(4) Considers that the people of Gibraltar have clearly spoken to Her Majesty's Government in the democratic expression of their wishes on the question of shared sovereignty;

AND THEREFORE:-

(5) CALLS upon HMG to take heed of the wishes of the people of Gibraltar, discontinue negotiations leading to a bilateral Anglo-Spanish Declaration of Principles including

the principle of joint sovereignty or any other sovereignty concession against the wishes of the people of Gibraltar and without their consent;

(6) CALLS upon Her Majesty's Government to take steps to ensure that the Spanish Government cannot, now or in the future, interpret and present Mr Straw's statement in the House of Commons on 12th July 2002, as an agreement by Her Majesty's Government to share sovereignty or as a concession or any agreement to make a concession to Spain in relation to the sovereignty of Gibraltar; AND

(7) REPEATS the statement (made in its motion dated 25th March 2002) of support for Gibraltar's participation in reasonable dialogue and support for good neighbourly European relations with Spain based on reasonable dialogue and mutual respect."

On a division being called the following hon Members voted in favour:

The Hon K Azopardi
The Hon Lt Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon A Trinidad

The following hon Members 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 motion, as amended, was accordingly carried.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Thursday 19th December 2002, at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 1.40 pm on Thursday 5th December 2002.

THURSDAY 19TH DECEMBER 2002

The House resumed at 10.00 am.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon K Azopardi - Minister for Trade, Industry and Telecommunications
The Hon Dr B A Linares - Minister for Education, Training, Culture and Health
The Hon J J Holliday - Minister for Tourism and Transport
The Hon 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 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 lay on the Table the Pay Settlement – Statement No 3 of 2002/2003.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

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 with the First and Second Readings of Bills.

Question put. Agreed to.

THE BANKING (AMENDMENT) ORDINANCE 2002

HON K AZOPARDI:

I have the honour to move that a Bill for an Ordinance to implement in the law of Gibraltar the provisions of Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of electronic money institutions and Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, be read a first time.

Question put. Agreed to.

SECOND READING

HON K AZOPARDI:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill intends to implement two directives in Gibraltar, one is on electronic money as has been stated and the other one really consolidates the Banking Ordinance and outlines provisions of consolidation that are really for that effect. Most of the amending Ordinance is concerned with the implementation of their electronic money directives, The hon Members most probably will have seen that. I am told though that it has very little impact on Gibraltar because the closest we have to e-money in Gibraltar is mobile phones prepaid cards but of course these do not satisfy the other criteria of the money that the hon Members will have seen in the definition that it being redeemable for cash at any given time and can be used to buy other goods and therefore I am advised that we have no e-money devices at present in Gibraltar. E-money does not have to be stored in a card it can be stored inside a PC and used for buying goods and services on the net which I assume therefore is the rationale behind some of this because of the moves towards e-commerce that we have seen in different years in the recent past. The directive provides for existing banks to issue e-money and new institutions dealing with e-money only. The amendments proposed in part two aim to ensure that the institutions are captured within the Ordinance so that the Commissioner applies the same entry standards to electronic money institutions as the banks themselves and so hon Members will have seen at sections 11A to E that there is a prohibition of the conduct of this activity without the authorisation of the Commissioner of Banking.

I bring a couple of things to the attention of the House at this stage, as hon Members will have seen from the definitions parts electronic money can only be stored to a total value of 120 euros on any one device, it is not considered to be a deposit and not something to do deposit guarantee arrangements and the scheme

on protection and all of that. The amendments proposed in section 23, amend the Ordinance to capture electronic money institutions within the criteria that the Commissioner needs to apply when considering applications for a licence and so sections 35 and 35A implement the new capital requirements for those institutions. The amendments to sections 59, 60, and 60A extend the Commissioner's powers to these institutions. The amendments to section 64 enable the Commissioner to withdraw the licence if the conditions are not met. The rest of the Bill on consolidation includes other things that I would bring to the attention of the House as well which we are introducing to ensure better administration of the Banking Ordinance as well as a correction of a number of sections that have been kicked up as showing some typographical errors and so on. Hon Members will know that the present Ordinance uses the Banking Regulations to prescribe forms to be used for the application of licence changes in management et cetera so it means that everytime the FSC considers it necessary to update one of the forms they have got to make amendments to the Regulation and it takes up resources and time. So what we want to do by part of these provisions is to ensure that the forms will be set and amended by the FSC as appropriate from time to time. It is already the case under the Financial Services Ordinance 1989 to 1998 and so I think it is much better that most of them are updated on line and they are accessible on line and it is much easier for the administration of the Ordinance. The Banking Ordinance presently makes incorrect or missing references to some of the relevant Ordinances, Financial Services Ordinance for example, so the proposed amendments seek to rectify that. There are also, hon Members will have seen, in the section that provides for powers to assist supervisory institutions that there is a proposal to remove EEA from this section which enables the Financial Services Commissioner to co-operate with non-EEA supervisory authorities on regulatory matters in the same way as it does with EEA supervisors. In fact, this will not really in practice change anything in the sense that it is already established FSC practice to assist non-EEA Regulators and the FSC has assisted United States and Swiss Investigators in the recent past.

There is also an intention in the Ordinance in the consolidation provisions and in the clean-up provisions to ensure that some of the administrative burdens placed on the FSC and on banks to display licences and so on are removed and there will be no physical issue of a licence other than a letter of authorisation subsequent to this. It still means that banks obviously need to be licensed, authorised and so on but it does remove some of the more archaic requirements.

Lastly, Mr Speaker, the Bill makes a number of changes to reflect that many of the banking directives have been consolidated into one single EU Directive. References to those directives in the new articles within the consolidation directive are contained within schedule 1 of the Bill and similarly schedule 2 contains a rewording of schedule 3 of the Ordinance to reflect the revised text of the consolidation directive. 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, Opposition Members will be supporting the Bill. We understand what the Minister has explained which is obviously a transposition of two European Union requirements, the Electronic Money Directive and the Banking Consolidation Directive in addition to which there is a measured tidying up or housekeeping measures contained in the Bill. There are a couple of points which we would like to raise. One of them relates to the question of the Competent Authority which we assume would remain unchanged in the consolidated text and in relation to the Consolidated Banking Directive and the second point refers to article 2 of the Banking Consolidation Directive. This is the one that actually lists the institutions to which the directive does not apply in article 2 of clause 3. Going down through the clause it says the directive

would not apply, for example, to the central banks of Member States. It then goes on to list various EU countries, Belgium, Denmark, Germany, Greece, in Spain it would not apply to the Instituto de Credito Official and then it carries on and in relation to the United Kingdom we note that it will not apply to the National Savings Bank amongst a number of other institutions which are listed in the directive. The Crown Agents for Overseas Development, the Agricultural Mortgage Corporation , the Commonwealth Development Finance Company et cetera. Our question is, when Gibraltar was excluded from the previous directive the Gibraltar Savings Bank was left out of this exclusion or rather it was included because it was not excluded from the previous directive, this was claimed to be an oversight and what we are wondering was that if in this particular instance the Government had sought to have it excluded from the consolidated text of the new directive taking advantage at the whole issue that was coming up again given that the exempt entities were being listed once more in the new directive. We have a query in relation to that and we would welcome if the Minister could explain whether they had sought the exclusion of the Gibraltar Savings Bank from the terms of the directive or not? Other than that the Opposition will be supporting the Bill.

HON K AZOPARDI:

Mr Speaker, let me deal with the last point first. If the Government had been aware of this issue it might have been a point to take up but we did not have that degree of advance notice of this directive. This directive basically emerged as it does in the consolidation process, there is a lot of legislation that sometimes we get framework proposals that we are asked to comment on but not in this case and this just emerged as a fait accompli that we had to transpose we were not given that opportunity to be able to inject any degree of influence in the wording of any particular article in this directive. As to the competent authority directive there is no intention to change the competent authority arrangement in relation to any parts of this Bill or any amendment I bring to the House.

Question put. Agreed to.

The Bill was read a second time.

HON K AZOPARDI:

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

Question put. Agreed to.

THE TRANSPORT (AMENDMENT) ORDINANCE 2002

HON J J HOLLIDAY:

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

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that the Bill be read a second time. Mr Speaker, since the Transport Ordinance 1998 was enacted certain minor omissions have been brought to attention or minor matters which required fine tuning. This Bill searched to address these issues. At clause 2(a) the definition of self-drive car is amended to read self-drive vehicle. This reflects the fact that a number of self-drive vehicles which are available for hire are in fact goods vehicles and not private motor vehicles. The provision of the Ordinance in relation to hire vehicles will for the future apply equally to private motor vehicles and goods vehicles. Clause 2(b) introduces the time scale for the renewal of licence issued under the Ordinance. It provides that a licence that is not renewed within a period of three months from its expiry, will be cancelled unless prior to the date of cancellation the licensee has made an application to the Transport Commission seeking an extension of time. This amendment will mean that it will be clear to the Commission what licences have been issued for any particular category of vehicle and also that those vehicles are actually being used by the licensee. This will be particularly helpful in the future should the Commission receive applications for new licences.

Clause 2(c) simply clarifies that the regime contained in section 11 to 14 applies equally to taxis, courtesy vehicles and private hire vehicles.

Clause 2(d) removes an anomaly in relation to named drivers for taxis. Section 17 generally provides that the named driver for a taxi, in other words a person who is going to drive a taxi for a reasonable period of time and not just a driver who is going to cover for a driver for a short defined period such as a holiday should not have any regular employment other than driving a taxi. However, section 17 (4)(b) exceptionally attempts to draw a distinction between two named drivers for a licensee providing that only one needs to have no regular employment other than that of being a taxi driver. This clause will remove this anomaly.

Clause 2(e) and also clause 2(g) and 2(j) provides that where an existing licensee applies to renew his licence the Transport Commission can do so automatically if it is satisfied that there has been no material change in respect of the applicants since the licence was granted. As previously drafted an application for the renewal of a licence would deem to be an application for a new licence and this was onerous on both the licensee and the Commission.

Clause 2(f) and also 2(h)(i) provides that an application for a licence by a company shall be signed by one or more of its directors in place of all the directors of the company. This makes the provision of this section less burdensome administratively.

Clause 2(h) and 2(m) follow on the change made to the definition of self-drive vehicles at section 2. The term vehicle is now used in place of car because hire vehicles can now include goods vehicles.

Clause 2(k) and 2(l) amend section 50 to draw a distinction between the maximum age for a private motor vehicle and a goods vehicle which are licensed as hire vehicles. Hire cars may be older than two years but goods vehicles available for hire can be up to five years old.

Clause 2(n) clarifies that the leave of the Court is required in respect of an appeal against a decision other than a final decision of the Transport Commission.

Clause 2(o) and 2(p) provides that it is necessary for the Court to make a winding-up order against the company, previously all that was required was that the petition should be presented to the court under section 158 of the Companies Ordinance. However there was one case in the year 2000 where an objector to an application for a licence issued a petition against a company in an attempt to spoil the application. This amendment will ensure this cannot happen again in the future. I commend the Bill to the House.

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

HON J C PEREZ:

Mr Speaker, I have not an objection but certainly a query to the amendment to section 17 (4) (b) (ii). At the moment as things stand the Commission may allow the registered owner of the taxi to drive it or a named driver by the registered owner who has no other employment and the Commission has the power to allow the registered owner and a named driver on those same conditions. The clause that we are amending is the one that follows that were in the Ordinance what we had was a situation were for short periods of time, sickness or holidays one could have two named drivers and one of them should be without any employment but the second one could be a part-timer and we are withdrawing the part where the second one could be a part-timer, as I understand it, and insisting that neither of them should be in full employment. That is why we are deleting at least one and substituting the word "*neither*" and deleting *"no"* and now the clause reads "*by two named drivers provided that the Commission is satisfied that neither of the drivers so named has regular employment.*" The practicality of it is that for short term employment there is normally no unemployed persons with a licence to drive a taxi because no one would think of passing the test for driving a taxi for short term employment and therefore there is really very little demand of long term unemployed people for short term employment to cover for sickness or to cover for absences for leave and so on. Therefore in practice there is not going to be anybody with a valid licence to be able to do the job that the Ordinance allows. Secondly I query the Government's policy in this respect which I think that they have not cleared with the people in the industry because it does not seem that the Minister knows how things operate and then where there is a problem which is in the coaches no similar move is being made. The drivers of the coaches, only recently people with years of employment with a company, have been sacked because the company favours casual labour and is now getting people and paying them by the hour and sacking people who have served for years and now we are saying the taxis, self-drive cars and everything else one has to be totally unemployed to be able to be a second driver or a third driver but we are not using that same criteria on all of the industry because the coaches are part of the same industry. Is this not discriminatory? Are we insisting that one part of the industry should be behaving in one manner and the other part which is more volatile where unemployment is being created, where there is evidence of casual labour, we are not doing the same thing? I think that if we are standardising the law we should be standardising it for everybody and we should also be looking at the practicality of being able to effect that piece of legislation. I rest my case.

HON J J BOSSANO:

Mr Speaker, on this particular point which is the one that concerns us we are not necessarily arguing that this should be done for everybody because I think what has happened recently with the coach drivers is very regrettable since people as my Colleague has said have been dismissed and those who are being employed are being employed as and when required making the industry totally reliant on casual workers and if there are passengers they employ people not even by the hour, a lump sum per trip. In that context of a level playing field between the two suppliers of services to visitors it seems to me that if one can only meet demand by not being able to recruit somebody on a short term basis but having to rely entirely on people available in the ETB

who are unemployed and the other one is free to casualise the entire workforce then it raises questions of whether the treatment is even handed. It may well be that the argument of the people in the industry is that they cannot afford to have people full-time and getting paid if there are no passengers demanding tours because that is employing people on idle time and having to pay them but if the argument is valid for coach operators it must be valid also for people who provide rock tours in taxis. I do not know whether any of those arguments have been considered by the Government. It may well be that since this is a very recent development the Bill might have been prepared before the latest developments have taken place but if that is indeed the case maybe they need to have a second look at it.

HON CHIEF MINISTER:

Mr Speaker, I do not intend to respond to the points that the hon Members have made because my hon Colleague the Minister for Transport will be doing that but I would just like to take this convenient opportunity to make a point to the hon Members in respect of a different populated matter. Recently the hon Members had cause to say publicly I think it was in response to some raising of the issue by the Chamber of Commerce or by the Federation of Small Businesses that it was already their policy, I think it is in their manifesto in the last elections and indeed I think in ours, that we would introduce some system of pro rata social insurance contributions in order to facilitate or reduce the cost both to the employer and to the employee for people who work. Can I just say to the hon Members one of the reasons why we have not yet implemented that scheme is precisely a concern in this area which we have not yet found a way of saving from. In other words there is a very thin dividing line in practice between a regime of pro rata social insurance contributions for permanently engaged part-time labour, in other words, like the Government says I employ a cleaner for 20 hours a week, that is permanently engaged albeit for part-time there is a very thin dividing line which in the private sector always disappears completely as a perceptible difference between that which is fine and we should all be looking to encourage. There are many people in the economy that either only want or can only have that sort of employment because of family commitments but between that on the one hand and what the hon Members are rightly complaining about on the other and that is, the introduction of casual labour, what I think the Spaniards call "contratos en precario" or worse. One of the reasons why we have not already pressed forward and we are under quite a lot of pressure to do so from employer organisations with our pro rata on which quite a lot of work has been done is precisely that we do not want to incentivise employers to opt for casual labour because that would give them an additional incentive to employ people by the hour if then they can pay social insurance contribution by the hour. We have not yet found a way of getting around it but I just thought that hearing the hon Members rightly decry the practice, one of the reasons why we all oppose contractorisation, for example, in the MOD is that it destroys the quality of employment in terms of security of employment and that sort of thing and I think that whereas in the public sector it is easier to protect workers terms and conditions of employment it is important and the Government do agree with the sentiments expressed by the Opposition Members that we should resist in Gibraltar going down the road in the private sector of casualising what were previously quality jobs and Government will certainly be keeping a close eye on that and we would certainly be reluctant through any change in the social security regime to actually make the position worse or incentivise employers.

HON J J HOLLIDAY:

Mr Speaker, I would like to address some of the issues that have been raised by Opposition Members. This change in section 17 4(b) (ii) is basically a change in order to address a contradiction that exists in the law as it exists today and this matter arose as a result of the fact that we have had an application for second drivers that are actually in full employment today and it has been the practice and it has been the interpretation of the law going

back to at least 1974 or even further back that all part-time or other named drivers have always been unemployed and this has been the practice all along and it has been the position of the Gibraltar Taxi Association all along that these named drivers should not have full employment. As far as the point made in respect of the fact that different regimes may exist for different sectors of the transport industry I must say that this has always been the regime that has existed for taxi licence holders and has not applied and has not been the law for say bus operators or coach operators basically because these set ups are more owner driven in fact there is a company that owns buses and offers employment to people to run on the numbers whilst taxis have been subject to licence holders having named drivers as second drivers and most of them actually operating their own licence themselves. So therefore the regime is in itself different because of the different nature of the sectors in the industry.

HON J C PEREZ:

Will the Minister give way?

HON J J HOLLIDAY:

Yes.

HON J C PEREZ:

Mr Speaker, the Minister says that there is an anomaly in the Bill but I do not see what the anomaly is. The Minister says that since 1974 the spirit of the Ordinance has been that there should be no part-timers in full employment. We all know that everybody in shift work is a part-time taxi driver, Gibraltar is too small. Since 1974 and even now the area where there is difficulty in recruiting people in full time employment is the area where the hon Member is putting in the amendment which is for short-term, for periods where the driver of the vehicle goes on holiday, for a period where the driver of the vehicle is sick and in order for the taxi to continue to operate so that the income of that person is not affected because he is away or is sick they put a named driver for a short period of time. If it were the case that no part-time person in another employment were able to do that there would be no one in the market to do it because not everybody has a valid taxi driver's licence to be able to do so. The Minister says it is an anomaly. It is not an anomaly, this is the law as it should have been implemented because the practicality and the operation of the law is such that it needs this clause to be able to be fulfilled, that is the point that I am making. The other point that the Minister has made about the industry not applying to the coaches, perhaps he should review the matter as my hon Colleague says with the recent events of people being pushed out of jobs and the company going in favour of casual labour. Perhaps it is a case were although the owner of the taxi here is more personalised the non-personalised business ought also to come under strict conditions of this nature so that we do not get the situation where owners of coach companies are going in favour of casual labour and dismissing their long-term employees.

HON J J HOLLIDAY:

I would like to continue, in fact if I would have been allowed to continue some of the issues that have been raised now may have been dealt with. Let me say that there has been consultation with the Gibraltar Taxi Association in respect of this particular clause, their position is that they do not as we presently considered the point made and there might have been a change of heart in recent days as a result of the fact that they may want the idea of having a change of policy in actually having people in employment being able to work as named drivers within the industry in order for them to provide a better city service outside normal hours in the light of the fact that there is currently an application for taxi city licences which is before the Commission to consider in the early parts of

next year and therefore as a result of this application the Gibraltar Taxi Association may be reconsidering their policy which has long been standing. Let me say this issue has been the matter of long discussions because I have had a number of taxi drivers who individually have come and said, *"I want to have my son working as a named driver but he is in full employment,"* and he has not been allowed to be able to exercise that right because they felt that the industry was not in a position to absorb that additional availability of taxi licences being available to operate on a daily basis. The result that there is now the threat to them as they see it of an application for 10 new city licences makes them more vulnerable and they have decided to change their policy and this has been the subject of discussion as recently as this Tuesday, two days ago and subsequent correspondence between the Taxi Association and myself only yesterday. I am not going to comment on the value of the legal changes here because I am not a lawyer and I guide myself by what I am advised legally, all I am saying is that the changes that are being proposed here are in no way going to change the practice that has existed for a long time and it is not intended to do so. It is intended to clarify the position for all concerned. Having said that and in the light of the fact that the coach companies have had to seek certain redundancies in recent times the Commission actually has been reviewing whether there is a case now to consider the idea of issuing coach licences with the corresponding obligations of actually having full-time drivers. We may be able to implement the idea of having a minimum requirement in order to issue coach licences with the condition that a driver must be appointed per licence, on the other hand we need to bear in mind that there are companies with a substantial number of licences where an obligation to have a full-time driver all year round on a particular licence could be a burden which they may not be able to sustain and therefore the Commission is currently deliberating as to the way forward. I think that there is a need to address this particular issue but one has to be sensitive because of the current conditions in the market.

Question put. Agreed to.

The Bill was read a second time.

SECOND READING

HON J J HOLLIDAY:

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

Question put. Agreed to.

THE MERCHANT SHIPPING (AMENDMENT) ORDINANCE 2002

HON J J HOLLIDAY:

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

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that the Bill be read a second time. Mr Speaker, the Bill before the House seeks to amend the Merchant Shipping Ordinance because a number of provisions of the Ordinance have become redundant. In addition the Government have decided to re-enact the provision on port state control in the form of regulations which take into account all the relevant EU directives. This is a field which is changing rapidly and the Government wish to have the flexibility to amend the port state control regime by issuing amending regulations in the Gazette as and when necessary. Finally the Ordinance makes provisions for the power to make regulations.

Clause 2 of the Bill adds definitions for Maritime Administrator and Minister to the Ordinance.

Clause 3 and 9 repeals those sections of the Ordinance and scale 3 which refers to STCW matters. These are now redundant consequent on the implementation of the comprehensive Gibraltar Merchant Shipping Money Training Certification and Related Seafarers Matters Regulations 2002 which were published in the Gazette on 25th January 2002. To avoid possible conflict and repetition it is intended to repeal these provisions.

Clause 4 of the Bill repeals part V(a) of the Ordinance and Clause 9 repeals schedule 1A which deals with port state control. This path and the said schedule will be replaced by proposed regulations which make provision for port state control and will include over and above the provisions of the previous legislation the transposition of further EU directives on port state control.

Clause 5 relates to pilotage. The Government have decided that pilotage fees should be simplified and that they should be collected by the pilots and not by the Pilotage Authority which is the Captain of the Port. Until now there has been a pilotage fund, a separate landing and embarking fee and a separate pilot administration charge. All fees have now been rationalised so there is a need to eliminate reference to the pilotage fund and the pilotage administration charge. There will nevertheless continue to be a need to regulate the amount which a pilot may receive in respect of pilotage fees and to provide for the manner in which pilotage fees are to be accounted for and this is what the proposed amendments will provide.

Clause 6 follows on from clause 5 and provides that the Captain of the Port as the Pilotage Authority may appoint an entity to carry out all the functions and duties necessary to ensure that the pilotage service operates efficiently if it does not wish itself to perform this role. The present section 183 makes provision only for the Authority to itself carry out this role.

Clause 7 repeals section 184 of the Ordinance which provides for the pilotage fund given that this fund will now be wound-up consequent on the abolition of the pilotage administration charge.

Clause 6 introduces the path for the Minister for Transport to make regulations and specifies the purpose for which regulations can be made. In summary the Bill will facilitate the transposition of EU directives on port state control, it will update our maritime legislation and it will eliminate provisions which are now redundant. I commend the Bill to the House.

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

HON DR J J GARCIA:

Mr Speaker, there are a number of questions which we have in relation to this Bill and we would be grateful if the Minister could answer. The first relates to the question of commencement, there is a clause which I have not seen before and is not very common in Bills, that is saying that it comes into operation on a date designated by the Minister by notice in the Gazette and then it says being a date at least 30 working days after the date of assent. We were wondering why that particular form of words has been used in this Bill. Other than that it seems to be pretty straight forward. What the Government are doing is repealing sections of the Merchant Shipping Ordinance and then incorporating that into two regulations and that is our understanding. To that we have no objection the Minister has explained that this is a field which is changing rapidly, if Government feel that it is quicker and more practical to do this by regulation Opposition Members have no objection but really there is one area where we would like some clarification and that is whether the two regulations that the Minister has in mind will actually do anything different from what the Bill that we are repealing or the sections that are being repealed already do? Because if it is different and it is being done by regulation it will not be discussed in this House. Those are the areas of clarification and the points that we would like to raise and other than that, pending the Minister's reply, Opposition Members will be supporting the Bill.

HON CHIEF MINISTER:

Mr Speaker, if I could just express a view on the first point that the hon Member has made the one about the 30 days. It is actually not strictly necessary in the legislation here. What has happened is that the draftsman has taken a decision that we made in relation to the Regulations when they are made and copied the same formula here. The point is this. That if there is going to be a change in the law which will bring me to the second of his questions we do not think that it is proper just to make ship owners immediately in breach of them without giving them a lead in period. The view has been taken that when new regulations are introduced into shipping matters there should be a 30 day introduction period so that shipping agents and ship owners can become familiar with them. It could have been achieved in this Bill by the usual device of not to commence until prescribed by the Minister in the Gazette. All that has happened is that the formula that will appear in the Regulations, for example, when there are new regulations adding new requirements those will come into effect 30 days after they have been promulgated. This could have been achieved, we could have had the usual clause here. There is also the need to ensure that the existing body of law is not disturbed until the new regulations are in place. We do not want there to be a vacuum between the two regimes. At the moment the body of port state control legislation which fully complies with EU directives is contained in legislation. This Bill says in future they can be done by Regulations and the previous body which is in legislation will be repealed and also re-enacted by way of regulations so that it is all in one body and therefore it is important to co-ordinate the repeal of one thing and the introduction of the new regulations to ensure that there is no gap in the legal cover for the port state regime.

The second point that he made is this, there is no change to the existing body of directives but there is a new directive which I think is due now in December which does not alter the regime but creates an obligation on the part of ports to focus particularly on more vulnerable ships. This has nothing to do with the 'Prestige', this regulation emerged long before the 'Prestige' incident, it was a routine unscheduled development of the European Communities port state control regime. The Regulations that will emerge once this Bill is passed will therefore both carry forward the existing port state control primary legislation and will also transpose this new port state control regulation which is really a modification of the existing regime. There are post 'Prestige' things in the pipe-line, for example, the community has just adopted a regulation relating to the phasing out, he may have read about it in the press, relating to the phasing out within the community of single hulled vessels

but that does not arise, that is not port state control, it does not arise under this legislation, that would be a completely separate issue.

Question put. Agreed to.

The Bill was read a second time.

HON J J HOLLIDAY:

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

Question put. Agreed to.

THE KEEPING OF WILD ANIMALS ORDINANCE 2002

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar the provisions of Council Directive 1999/22/EC relating to the keeping of wild animals in zoos, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill implements in Gibraltar the Council Directive that has been cited relating to the keeping of wild animals in zoos. The purposes of the Bill are to protect wild fauna and to conserve biodiversity and this will strengthen the role of zoos, it is alleged, in the conservation of biodiversity. The Bill provides that zoos must be operated in accordance with a licence and the conditions to the licence will require the zoo amongst many other important things to implement specified conservation measures. The licences are granted by the Minister for the Environment. There are no zoos within the conventional meaning of the word in Gibraltar no one should derive a conclusion that that makes the legislation irrelevant to Gibraltar, apparently it does not. However the definition of the directive it implements and therefore the definitions in the Bill is widely drawn. The botanic garden may conceivably fall within the definition as it houses or it is said to house some animal species whether or not they are for public exhibition which would be a requirement under the directive is more than debatable but in any case under the directive and therefore the Bill establishments may be exempted if they do not exhibit a significant number of animals or species to the public and the exemption does not jeopardise the purposes of the Bill. I have already stated the purposes of the Bill to protect wild fauna and to conserve biodiversity. The power to issue exemptions is vested in the Minister for the Environment who is the Competent authority in Gibraltar appointed by this legislation for the purposes of the directive. I understand that the Minister for the Environment has already taken the view that it would be appropriate either that the Bill does not apply to the botanic gardens or that if it does it is appropriate to exempt it from its provisions. The Bill specifies the information that must accompany an application for a licence and requires that the zoo is inspected before a licence is granted. Similar provisions apply to the extension of the period of a licence and significant amendments to the licence subject to compliance

with those, the licence would be transferable. If conditions attaching to a licence are breached the Minister for the Environment may impose further requirements and failing compliance with those he may order the zoo to be closed. The Bill also makes it clear that if a zoo does not have a licence it too may be closed. The Bill also makes provision for the disposal of animals if the zoo is closed.

Mr Speaker, the hon Members will see from a perusal of the Bill that it is not a lengthy or complicated piece of legislation, it establishes a licensing regime, information needs to be provided in the application for the licence, the licence may be granted if certain conditions are met, there are provisions dealing with extension amendment and transfer of licence significant consequences for breach of licence as I have just said, closure of the zoo and disposal of animals, the Competent Authority may charge for the services that he is obliged to deliver under this Ordinance. There is a section creating offences for failing to comply with the conditions of a licence or for giving false information in an application for a licence. There is a defence available to any charge by a zoo licence holder and that is that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence and then in the schedule there is a list of conservation measures at least one of which has to be present before a zoo can be licensed. I do not expect this Bill which as I say implements a directive will have any appreciable impact in Gibraltar, the only area of life which I think is even within the area of zoos, I do not want to call it a zoo because I would argue that it is not for the purposes of legislation but the animals kept by St Martin's School which I would believe would not be caught because they are not exhibited to the public. So I think that this is just a directive with no consequence or impact upon Gibraltar. I commend the Bill to the House.

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

HON DR R G VALARINO:

Mr Speaker, I have taken what the Chief Minister has said on board. I realise that this is another piece of EEC legislation which we need to pass. There are only two things I would like to say on it. I am glad that the Chief Minister has assured that this will not affect the conservation area in the Alameda Gardens but is he completely sure of this? The one at St Martin's School is obviously far smaller so I do not think that there is any problem with that. The last question is I wonder whether any application for a zoo has been received by Government considering that there are 187 different species of wild animals in Gibraltar?

HON CHIEF MINISTER:

Mr Speaker, I am surprised that there are only 187 species of wild animals in Gibraltar I would have thought that there were much more.

HON DR R G VALARINO:

At the last count.

HON CHIEF MINISTER:

Mr Speaker, as I am sure on reflection the hon Member will agree until we have passed this Bill there is no regime that would have enabled anybody to apply for a licence for a zoo. I suppose that from time to time people listening to our debates wonder whether this is a zoo that should be licensed but I am happy to say that that is only on the most rare of occasions and if we are or we are not a zoo that requires a licence. Anyway there are no zoos. It is important for the hon Member to focus on the definition of zoo

which is a permanent establishment where animals of wild species are kept for exhibition to the public. I suppose it may be arguable by that definition the Apes Den might be a zoo but certainly the Government would have no difficulty in living with this regime. The Apes Den more than complies with the criteria for a zoo. In answer to this question, there have been so far no applications, I am not aware it is sometime since as I have been to the botanic gardens but certainly when I last went they did not keep wild animals for exhibition to the public. I do not know whether they have recently started to do so, I do not think so, it would not apply to them it might apply to St Martin's School if they are open to the public and it might apply to the Apes Den.

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 Bankruptcy (Amendment) Bill 2002;

(2) The Banking (Amendment) Bill 2002;

(3) The Transport (Amendment) Bill 2002;

(4) The Merchant Shipping (Amendment) Bill 2002;

(5) The Keeping of Wild Animals Bill 2002.

THE BANKRUPTCY (AMENDMENT) BILL 2002

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

Clause 2

HON K AZOPARDI:

Mr Chairman, last time when we discussed this Bill we discussed the concern that there was that in some ways because the Insolvency Proceedings Council Regulation No 1346/2000 that we were presenting and transposing as part of this Ordinance was more restrictive in the parameters of assistance that could be

given to insolvency proceedings happening in the European Union that in some way if we amended it by just deleting the words *"United Kingdom"* to *"European Community"* that it would also then have an impact on the assistance that we could give the United Kingdom courts and so make it more restrictive on our courts to lend that assistance that hitherto has been able to be given. Government have considered that issue and I explained to the House last time that it was not the intention to make it more restrictive but rather to maintain the status quo in relation to the assistance that we could give the United Kingdom courts but also to lend assistance to European Community courts in the way that the Insolvency Council Regulation foresees. I intend to move an amendment to this part of the Bill so that it is clear that that is what we are trying to achieve and so that there is no room for doubt I have copies for the hon Members of the proposed amendment but essentially hon Members will see certain amendments in the Bill in front of them which I would ask them to disregard in essence and rather what we intend to do is :-

Delete sub-paragraph "(a)" and substitute by "(a) adding "and EC" after "British" in the head-note to section 98;"

Delete sub-paragraph "(b)" and substitute by "(b) in section 98, adding "(I) after the figure "98" and inserting the following subsection –

"(2) The Supreme Court and the officers thereof shall also act in aid of courts in the European Community (other than the United Kingdom) in respect of insolvency proceedings following under Council Regulation 1346/2000 on insolvency proceedings and as provided for in that Council Regulation."

Our view is that that would perfectly take care of the points that we discussed last time and that would accord with the original intention that the Government had in presenting this Bill to the House so I would be grateful for the hon Members' support to that amendment.

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 BANKING (AMENDMENT) BILL 2002

Clauses 1 to 20 , Schedules 1 to 3 and the Long Title - were agreed to and stood part of the Bill.

THE TRANSPORT (AMENDMENT) BILL 2002

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

Clause 2

HON J C PEREZ:

Mr Chairman, if we can take clause 2 by sections we would be abstaining on 2(d) and supporting the rest of the Bill given the explanation of the Minister where he says that only last Tuesday the Taxi Association is said to be in agreement with the amendment we still have our reservations but if in practical effect it can be implemented we are prepared to abstain on that clause and support the rest of the Bill.

HON CHIEF MINISTER:

Can I just say this to the hon Member, there is no great policy issue here. The Government are not trying to achieve something in particular, it is not that we do not want certain people to drive taxis or that we do want other people to drive taxis. This is the sort of point where the Government are always going to be willing to revisit if it does not work on the ground as it is intended. There is no specific policy objective that the Government are trying to force on the industry in this point so he can abstain in the knowledge that if his fears materialise we can revisit this legislation.

HON J J BOSSANO:

Mr Chairman, given that the Minister said that the whole purpose of this was to remove an anomaly it seems to me that much of the argument that has taken place does not seem to reflect anything in the law as it stands or in the law as it is proposed as a result of the amendment. If there is an anomaly it would appear to me to be in the interpretation that as the law stands now during the period that the Minister may have prescribed, I do not know whether the Minister knows whether he has prescribed any period or not because the overall governing principle is that this is not something that happens all the year round because of illness, absenteeism or anything else. The law says quite clearly that the section is only triggered if the Minister has prescribed a period during which this may happen and my recollection going back a very long time was that the rationale of this was that if there was a period of time when the Minister responsible considered that there was a level of activity and demand for services which could not be adequately met by one car one driver because that meant the driver having to do enormously long working hours it was permissible for that prescribed period for one car to have two drivers at the same time. As the law now stands it is alleged that there is an anomaly between (b) subsection (1) and (b) subsection (2) it can only be because it is assumed, although the law does not say so, that if during such a period there is a registered owner and a named driver the named driver has to be full-time because he is caught by subsection (a) and it is presumed that the registered owner has to be full-time although the law does not say. Therefore the argument is, that if during such a period there are two drivers for a car simultaneously and one is an owner and the other is not they are both full time however, if the owner does not drive at all and he has two drivers then one may be part-time and only one has to be full-time. If that is the nature of the rationale which is the only deduction I can make from the explanation then obviously the anomaly can be removed by permitting the named driver in those particular circumstances under part 1 of section (b) to be not in full-term employment and then one is treating both the same because this can only happen anyway if the Minister permits it. If a Minister says, "*I will not prescribe a period when there can be two drivers,*" which is at his own discretion, none of this takes place and therefore he must know whether he has actually prescribed it. It seems to me as if we are talking about an entirely hypothetical situation but we are not willing to go along with voting in favour of a change in the law when in fact it is not clear that the House knows what it is doing in changing this law.

If it is purely in order to tidy up what is perceived as an anomaly then I would move an amendment deleting the proposed amendment in the law as it stands before the House and instead making the named driver in the first part compatible with the second named driver in the second part by allowing him not to be in full –time employment.

HON CHIEF MINISTER:

Mr Chairman, can I say to the hon Member that in an area such as this were there are sensitivities and interests, the Government are not going to want to agree to anything on their feet so to speak. My own personal view is that I do not know why there should be a restriction that named drivers have to be unemployed or not in full-

time employment, at the end of the day, if it is temporary cover the temporary cover should be provided by whoever is there whether or not they are in full-time employment. That is the point that I would like to review but review in slower order and in consultation with the Taxi Association and rather than now depart from the Bill in a way that we cannot fathom the potential consequences of what we are going to do is that we are going to leave it as it is, the hon Members can abstain, and we will consult the Taxi Association and if they are happy that we remove this non full-time employment criteria it seems to me that it may be a modernising act to just delete that from the legislation altogether and we can bring a short Bill to the House in the next meeting to do that if that is agreeable to them.

HON J J HOLLIDAY:

On what the Chief Minister has just said I think the position up till Tuesday when I actually met the Taxi Association and that point was raised with me is that they were totally against any non part-time drivers participating unless it was on short temporary periods like holidays, sickness et cetera in which case there has never been a problem for the Minister to authorise that to happen on a temporary basis but on a long term basis where the licence holder in most cases does not even work but has two named drivers they have insisted that these should be people that are unemployed and not people that are on full-time employment and this issue basically arose as a result of the fact that a decision that was taken by myself and the Commission in respect of an application went to the Ombudsman and the Ombudsman recommended as part of his deliberation that there was an anomaly in the law and it was taken to those that know more about legal phraseology than I do and I was advised that there was an anomaly. We are not trying to change existing policy what we are trying to do is address an issue on a point of law which has been raised whether that is valid or not I am not the one to judge but all I can say is that this is not meant to generate any change in policy or in practice as has existed going back to 1974 or beyond. As a result of recent developments in terms of applications for new city taxi licences the Taxi Association have come round to the view that it may be in their interests in order to provide a more adequate city service to allow this to happen now and so they actually flagged in a letter to me the following day which I asked them to do in writing the fact that they wanted this to be considered. The Commission will be considering this at their next meeting, this may require a change in the law but not through the fact that this actually generates a change of policy but by the fact that there may be a recognition in the industry that it is in everybody's interest to liberalise the possibility of having part-time drivers being able to seek employment as a second named driver and that is how the situation stands today.

MR SPEAKER:

If you are quite happy it being on the record that you are abstaining on that there is no need to put it to the vote.

Clause 2 - stands part of the Bill.

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

THE MERCHANT SHIPPING (AMENDMENT) BILL 2002

Clauses 1 to 9 and the Long Title - were agreed to and stood part of the Bill.

THE KEEPING OF WILD ANIMALS BILL 2002

Clauses 1 to 15, the Schedule 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 Bankruptcy (Amendment) Bill 2002 with amendments; the Banking (Amendment) Bill 2002, the Transport (Amendment) Bill 2002; the Merchant Shipping (Amendment) Bill 2002, and the Keeping of Wild Animals Bill 2002; have been considered in Committee and agreed to and I now move that they be read a third time and passed.

Question put.

The Bankruptcy (Amendment) Bill 2002; the Banking (Amendment) Bill 2002; the Merchant Shipping (Amendment) Bill 2002, and the Keeping of Wild Animals Bill 2002, were agreed to and read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that the House do now adjourn to Tuesday 21st January 2003 at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 11.30 am on Thursday 19th December 2002.

TUESDAY 21ST JANUARY 2003

The House resumed at 10.25 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 R Rhoda QC - Attorney General
The Hon T J Bristow - Financial and Development Secretary

OPPOSITION:

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

IN ATTENDANCE:

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

DOCUMENTS LAID

The Hon the Chief Minister moved under Standing Order 7(3) to suspend Standing Order 7(I) in order to lay on the Table:

(1) A report by the Referendum Administrator on the Referendum held in Gibraltar on the 7th November 2002;

(2) Gibraltar Referendum – Report by the Committee of Observers;

(3) The Ombudsman's Report – 3rd Annual Report for the period January to December 2002.

Ordered to lie.

The Hon the Financial and Development Secretary laid on the Table a Statement of Improvement and Development Fund Reallocations approved by the Financial and Development Secretary (No 1 of 2002/2003).

Ordered to lie.

MOTIONS

HON CHIEF MINISTER:

I have the honour to move the motion standing in my name which reads:-

"This House Declares and Resolves:-

1. That it is in the economic interests of Gibraltar to encourage and incentivise the use of Gibraltar for the arrest of ships in support of maritime and admiralty litigation. Such use of Gibraltar generates significant economic activity in the following respects:-

   (1) Contribution to Government revenue through Poundage on sale proceeds, berthing fees and tonnage dues;

   (2) The employment of ship keepers by the Admiralty Marshal;

   (3) The purchase of goods and services from ship chandlers and other sectors of the Gibraltar retail, wholesale and service economy;

   (4) The generation of fee income for law firms in Gibraltar;

   (5) The generation of business for hotels, airlines and the local travel and transport sector;

   (6) The generation of business for port operators, including tugs, stevedores and fuel suppliers.

All of these contribute to job creation and sustainability in the economy.

2. That it is therefore in the economic interests of Gibraltar that arresting parties, especially those that use Gibraltar in respect of more than one vessel, be incentivised to use Gibraltar by the refund of part of the fees and dues (as defined in the Government (Fees and Dues) Ordinance) in the following manner.

3. That out of the revenue received by the Government into the Consolidated Fund in respect of "poundage" (commission) upon a sale of the ship by the Admiralty Marshal, a refund shall be made to the Admiralty Marshal (to be aggregated with the fund comprising the ship's proceeds of sale and paid out to whatever party may be entitled to payment out of such fund under order of court), in a sum calculated in accordance with paragraph 4 below ("the refund sum").

4. The refund sum shall be calculated as follows:-

   (1) Where the arrest is not a fleet (as defined below) arrest and the sale price of the vessel exceeded £15,000,000 the refund sum shall be 0.25% of the sale price of the vessel in excess of £15,000,000.

   (2) Where a ship has been sold as part of a fleet the refund sum in respect of each such ship shall be calculated in accordance with the following scale:

(i) Where the total fleet sale price did not exceed £30,000,000 the refund sum shall be 0.2% ~~of the sale price of each ship~~ of the first £30,000,000 of the total fleet sale price or the sum calculated under 4(1) above (whichever be the greater);

(ii) Where the total fleet sale price exceeded £30,000,000 but did not exceed £100,000,000 the refund sum shall be a sum equivalent to (1) 0.2% of the first £30,000,000 of the sale price of each ship plus 0.4% of the remainder therefore in excess of £30,000,000 or (2) the sum calculated under 4(1) above (whichever be the greater).

(iii) Where the total sale price exceeds £100,000,000 the refund sum shall be a sum equivalent to 0.4% of the total fleet sale price.

5. In this Resolution the following words and phrases shall have the meanings attributed to them herein:-

"fleet" - means two or more vessels that have been sold by the Admiralty Marshal in Gibraltar by order of the Court upon the application of the same party within a period of thirty days of each other.

"total fleet sale price" - means the sum resulting from the addition of the sale prices of all the ships in a fleet.

6. This Resolution shall apply to fees and dues received by the Government into the Consolidated Fund by virtue of poundage on sale by the Admiralty Marshal of any ship, the sale of which has been effected on or after the 1st day of November 2001.

7. This Resolution supercedes and replaces the Resolution passed by the House on the 5th December 2002," and spoke on the motion.

Mr Speaker, by way of explanation hon Members will recognise this motion, subject to the amendments, as being the one that we passed at the last sitting of the House. For the guidance of the House I have shown in this notice of motion the new language underlined and the deleted language deleted, so the hon Members can all see at a glance what the amendments are. The principle amendment is in 4(2)(iii) and the reason for that is that by an error in the motion last time it was not the same as the Bill that we had originally passed. The Bill that we had originally passed was that if the total fleet sale price exceeded £100 million it would all be at 0.6 per cent whereas the motion that we actually passed rendered the first £30 million of the total fleet sale price subject to a scale. In other words, as we passed the Bill originally if the total fleet sale price had been £200 million in excess of £100 million even if it had been £200 million, the whole of the £200 million would have been at 0.6 of 1 per cent. The motion that we passed rendered the first £30 million of that £200 million at the higher rate of the scale and not the whole lot at 0.6 per cent and that was not what the Government intended to do nor was it what this House approved when we originally passed the Bill when we were doing this by legislation. That is the principal motion. When a ship has been sold as part of the fleet there should be a three tier regime whereby, where the total fleet sale price did not exceed £30 million the refund is 0.2 per cent of that first £30 million so that the fee is actually 0.8 per cent and then where the total fleet sale price exceeds £30 million but did not exceed £100 million the discount is 0.2 per cent on the first £30 million and 0.6 per cent on the next £70 million and where the total fleet sale price exceeds £100 million and this is the novelty now, the whole of the £100 million

plus, the whole of it and not just any excess over £30 million the whole of it is subject to a discount of 0.4 per cent and therefore liable to pay at 0.6 per cent. That is what we debated at the time of the Bill. That is what we intended to do and did do at the time of the Bill and the motion that I brought to the House was in error in that respect and the other amendments are consequential to that in that the middle step is left in. The regime from £30 million to £100 million is left at two tier. That is consistent with what we passed in the motion. That is the regime that we passed in the motion except that we passed it for anything in excess and not for the whole amount. So, I hope that the hon members will feel able to continue to support this motion which now more accurately reflects the Bill that we passed in the House originally. I commend the motion to the House.

Question proposed.

HON J J BOSSANO:

For the third time we say yes.

Question put. The House voted.

The motion was carried unanimously.

BILLS

FIRST AND SECOND READINGS

THE INSURANCE COMPANIES (AMENDMENT) ORDINANCE, 2003

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to amend the Insurance Companies Ordinance 1987 for the purposes of transposing in part Directive 2000/26/EC on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (Fourth Motor Insurance Directive), be read a first time.

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that the Bill be read a second time. Mr Speaker, this Bill before the House seeks to amend the Insurance Companies Ordinance 1987 by inserting certain sections which will transpose in part directive 2000/26/EC on the approximation of the law of EU Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending

Council directive 73/239/EC and 88/357/EEC. This directive of 2000 is commonly known as the Fourth Motor Insurance Directive. Clause 2 of the Bill introduces a new definition namely of the term Fourth Motor Insurance Directive, injured party, information centre, motor vehicle liability insurance business, and motor vehicle liability insurer. Indeed at the third reading of the Bill I will beg to move that two of these definitions, that is, information centre and motor vehicle liability insurance business be amended in order to ensure that there is no ambiguity. Clause 3 contains proposed substantive changes to the Ordinance, three sections have been added sections 29, 30, and 31. Section 29 provides for the appointment of a Claims Representative in each EEA state by anyone who is carrying out or intends to carry a motor vehicle liability insurance business. Indeed I will be introducing proposed changes to this section of the Bill as published to clarify some details. Obviously a Claims Representative does not need to be appointed in the state where the insurer has received his official authorisation as the insurer will receive every relevant claim direct. An amendment to section 22(9) will highlight that the contact details of an insurer shall be provided to the claims information centre in Gibraltar and in any other EEA state. The Claims Representative appointed by the insurer will be the responsibility of handling and settling claims arising from an accident in the case referred to in article 1 (2) of the Fourth Motor Insurance Directive. The qualification for a Motor Vehicle Liability Insurer are set out in section 29(3).

Mr Speaker, at Committee Stage I will be seeking to insert certain additions to section 29 which will provide that the Commissioner may direct that an insurer whether in Gibraltar or elsewhere shall not enter into new contracts of motor vehicle insurance unless he has appointed Claims Representatives. The second addition will prescribe penalties for an insurer who fails to comply with the obligations imposed by section 29. Section 30 contains a typographical error where the word *"insurer"* appears in two places where it should have read "*injured".* I will seek to correct this error at Committee Stage. This section sets out the procedure for handling and settling claims. I will be seeking to put in place certain amendments at Committee Stage which will introduce strict conditions for written evidence in support of claims and which will set out in greater detail the provision of interest and the calculation of interest. Further amendments will seek to provide that a claim should be delivered in whatever way is lawful in the insurance of Claims Representative respective states of residence or establishment as the case may be. Finally, section 31 guarantees the right of legal action by any injured party. 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 Bill itself is pretty straightforward when compared to the directive and what it purports to do is that it actually follows very closely what the directive itself says but there are a number of areas in which Opposition Members would welcome some information and clarification from the Minister. First of all the Bill says that this is a part transposition of the directive which implies that obviously there are some parts which are being included and other parts which are being left out. We would like to have some information on that specifically in the areas that have been left out and we have been able to identify which refer to the compensation body which is required to be set up where an injured party may apply if an insurance undertaking fails to appoint a representative or is delaying in settling a claim and there also has to be some kind of EU co-ordination between these compensation bodies. There is also reference in the directive to a guarantee fund. Those are some of the areas which we do not see in this Bill and which may be partly transposed and we would like to know why the Government have pursued that line and why the directive is being transposed in parts and not as a whole.

The other question we have is related to the setting up of an information centre. One thing which the directive says is that there has to be information centres set up in each Member State where somebody who has suffered an accident in any other Member State which he is not resident can then go and ask for information relating to the vehicle, registration, insurance of the person who was responsible for the injury. We would like to know where that information centre is in Gibraltar or when and where it is going to be set up?

One issue which arises in relation to personal data and that is the storage and giving of personal information between these different information centres which would obviously include the one in Gibraltar and that includes giving information like the owner's name et cetera. The name of the owner of the car that perpetrated the accident or the injury. The directive in its preamble refers to the personal data within the meaning of directive 95/46/EC of the EEC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and it says, "*...the processing of such data which is required for the purposes of this directive must therefore comply with the national measures taken pursuant to 95/46 EC. The name and address of the driver should be communicated only if national legislation provides for such communication.*" Mr Speaker, we would like some clarification on that point as well in relation to the personal data aspects and the free movement of such data. The other issue which we have been able to identify refers to the position of the United Kingdom because the directive speaks of Member States and so does the Bill speak of EEA States so it is not very clear whether the United Kingdom will be regarded as another EEA state for Gibraltar's purposes or whether we are actually both parts of the same and if we are does it mean that insurance entities in the other Member States have to appoint a Claims Representative in Gibraltar as well as in the United Kingdom because that is obviously something which is in the directive and in the Bill so we would like some clarification on that aspect as well. The final point would be that the existence of this separate Gibraltar information centre would have to be notified to the European Union as part of the other centres that have been set up in the rest of the EEA. Those are the queries that we have and we would be grateful for clarification on them.

HON J J HOLLIDAY:

There are a number of issues that have obviously been raised by the hon Member and which I would like to deal with at Committee Stage. There are a number of issues which I would like confirmation from the legislation unit before I actually give a clear and straight answer on the various issues which have been raised so therefore I would like to cover these at Committee Stage if possible

Question put. Agreed to.

The Bill was read a second time.

HON J J HOLLIDAY:

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

Question put. Agreed to.

The House recessed at 10.45 am

The House resumed at 11.10 am.

COMMITTEE STAGE

HON CHIEF MINISTER:

I have the honour to move that the House should resolve itself into Committee to consider the Insurance Companies (Amendment) Bill, 2003 clause by clause.

THE INSURANCE COMPANIES (AMENDMENT) BILL, 2003

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

HON CHIEF MINISTER:

Mr Chairman, I better rise now because I do not know exactly whether there will be a clause that will raise the issues raised by the hon Member. The reference to the part transposition of the directive is because the transposition is going to be done in a package of legislation consisting of three elements, one is this primary legislation and there are already ready and drafted two regulations under the Insurance Companies Ordinance that will complete the transposition. Apparently the reason why some of it is done by regulation and some of it by primary legislation is that the law in relation to the transposition of the other bits that will be done by regulation requires amendments to existing regulations affecting the Insurance Companies Ordinance.

Mr Chairman, that is the explanation that I have had, I do not see however how that explanation fits with the absence from this Bill of the aspects relating to the Information Centre because certainly no compensation funds et cetera already exists and therefore I can see that there might be existing body of law that needs to be amended in regulations but not the information centre. It is the Government's intention that there should be an information centre in Gibraltar so certainly there will be transposition of the Information Centre bits of this directive in the regulation but I do not see that the explanation that I have just given him for the split between primary and subsidiary legislation accounts for the absence from the Bill of the bits relating to the Information Centre. The reason for dealing with the information centre in the regulations must be some other reason which no one in the Legislation Office has been able to give me but it cannot be because it requires the amendment of other body of law because there is no body of law relating to information. As to where the information centre will be, that has not yet been decided but the obvious candidates are the motor vehicle licensing section either by itself or in combination with the Royal Gibraltar Police. The reason why the hon Members have read if they have read the directive in that degree of detail the role that the information centres will play is basically to inform victims of accidents of who is the authorised representative or first of all who is the insurer of the vehicle in question then who is the authorised representative of that vehicle in question because they will have spotted from the directive and from the legislation that the essence of this legislation is that if an EU or EEA citizen suffers an accident in another EEA country other than his own then he can take legal proceedings in his home country. The idea being, for example, if he or I suffered a car accident in France or in Switzerland, to take the example of an EEA case we could then take the necessary action against the relevant insurer in Gibraltar without having to sue in the Swiss courts, that is the essence of the scheme and

the information centres support that by providing the necessary information to allow one to exercise those rights.

HON DR J J GARCIA:

Can the Chief Minister give way so that I can.....

HON CHIEF MINISTER:

Yes of course.

HON DR J J GARCIA:

The other query was in relation to the need to appoint a Claims Representative in each EEA state, do they have to appoint one in the UK as well as in Gibraltar separately or only for the UK, how would that work?

HON CHIEF MINISTER:

First of all the need to appoint an authorised representative only arises if one is carrying out motor insurance business so it is not the agent, the chap in Main Street or elsewhere in Gibraltar where he or I take out our insurance policies, one of the local insurance brokers, they do not have to have authorised representatives. The authorised representatives is by the underlying insurer, there is in fact nobody in Gibraltar carrying out insurance business. All the motor insurance sold in Gibraltar are sold by agents in Gibraltar of UK or other European company insurers, so it is they who need to have authorised representatives in all the European Community countries but there is an issue arising from the question that the hon Member poses it does not arise in relation to the question that he asks for that reason but it does arise in relation to who is entitled to benefit from this directive and if particularly he looks at section 29 (3)(c) on page three he will see from the last paragraph in (3), about two thirds of the way down, that a motor vehicle liability insurer must ensure that each Claims Representative that is appointed in all the various countries can do all of those things listed there, as he moves his finger down the page, in relation to claims arising from an accident occurring in an EEA state other than the EEA state of residence of the injured party and the question that that raises is, if a UK resident has an accident in Gibraltar has he had an accident in an EEA state other than the EEA state of his residence and the answer to that appears to be no he has not had and therefore for the purposes of this directive the UK and Gibraltar are not regarded as separate EEA or Member States. So that if he or I have an accident in France we can have recourse to this directive but if he or I have an accident in London or somebody who lives in London has an accident in Gibraltar it appears that they are not entitled to avail themselves of the provisions of this directive.

HON J J BOSSANO:

Mr Chairman, when the Chief Minister says that it appears that they are not entitled they are not entitled because we have chosen not to do in this one what we have done in others which is to treat UK and ourselves as separate Member States. The whole of the insurance legislation in the United Kingdom Financial Services Legislation says Gibraltar will be deemed to be a separate Member State and if that was not there the primary EU directives would not require us to provide for United Kingdom citizens or UK to provide for Gibraltar citizens anything. I do not see that this is drafted any differently from any other directive that only mentions Member States.

HON CHIEF MINISTER:

Mr Chairman, there has not been a policy of choice made here I am just interpreting the words that the draftsman has chosen to use. There is a difference between this piece of legislation and all the others that he has referred to, this particular legislation defines one's entitlement by reference to one's rights outside the country in which one lives. That is unusual for a piece of European legislation to say *"you are entitled to this right in the whole community and EEA unless you suffer the accident in your own country of residence"* and I have never seen that happen before. I know that there are arguments, for example, the July issue about whether Gibraltar is or is not a different Member State which clearly it is not and the right that that gives us. I do not think that this falls into that category because this is the directive itself saying this regime exists for people who have accidents outside the country in which they live. If one has an accident in the country in which one lives this directive does not intend because it is assumed that one understands the court system in one's own country. That is the logic of it, so this directive I think pretty uniquely and I say uniquely, the only one that I am presently aware of requires us to answer the question, "What country do you live in, what country do I live in, for the purposes of this directive do you live in a country which for EEA and EU purposes is a different country to the UK?" The hon Member may have a different interpretation to the one that I have put on to it, he is entitled to it, if on the other hand what he is saying is that we should amend that the legislation should not exclude UK nationals and that that can be fixed by language and that whether we should not legislate in excess of the directive requirements in order to enfranchise so to speak residents of the United Kingdom so that if a resident of the United Kingdom had an accident in Gibraltar .....*[HON J J BOSSANO: Or vice versa....]* No we cannot guarantee that, that would be for what the UK legislation says and that would be the danger that if we did it we may not get reciprocity. We can by our legislation extend the benefit of this to UK residents that are in Gibraltar. What we cannot by our legislation is extend the benefit of this to Gibraltar residents who travel to the UK and have their accident there because that is how the UK has transposed it in their legislation. The Government have no policy objection to legislate to include UK. As I said before there has not been a policy choice here this is just the words that have been drawn directly from the directive and we are having a discussion about what the words mean regardless of what anybody intended should be the provision. The intention was to transpose the directive. We are free as a legislature to say," *..well notwithstanding the fact that the directive does not require it we are extending this regime to UK residents who suffer accidents in Gibraltar."* What I cannot do, I can find out how the UK have done it and see if there is reciprocity or invite them to take their view if their should be reciprocity but I cannot give the House any assurance that that has, is, or will be the case so that if we did extend this to UK residents we risk lack of reciprocity. We can revisit this by way of amendment at a later date without delaying this, there is an urgency to this because this is one area in which the Commission is threatening infraction proceedings so I would not wish to delay the legislation of this particular Bill but certainly we can consider with the hon Members whether at some future date we should not bring an amendment perhaps after we have had a chance to see whether the UK is offering reciprocity for us in the UK and if the answer to that is 'yes' then we can bring an amendment to our legislation to extend it to UK residents as well. Remember this is not nationality this does not raise issues of nationality it raises issues of residence so that the legislation when it says who is entitled to benefit and who does not it speaks of the country where one resides not of nationality. So if a Frenchman and an Englishman lives in Spain he does benefit. If a Frenchman lives in the United Kingdom he does not.

HON J J BOSSANO:

Mr Chairman, I think that on the basis of that we will continue to support the Bill. Although it might not have been intended as a policy decision the fact is that I do not think this really does anything that has not been done many times before in directives in terms of talking about what one needs to do in other Member

States because in fact if we go right back to the very beginning in 1973 and the reciprocity of medical services which generates the right to medical services in Member States other than the one that one resides well obviously the EU assumes naturally that if one is ill in one's own country one will get hospital treatment. It provides that if one is ill in a country other than the one of residence one gets treatment there and the UK signed a reciprocal medical services agreement in which we would be treated as a separate country the word *'country'* is actually used in the agreement and signed by the Foreign Secretary. Apart from being new it was there in 1973 it was the first piece of EU legislation we transposed. I think that the other thing that arises is that if in fact the provision for protection arising from the appointment of agents and the existence of information centres in respect of other Member States has already been satisfied in the Member State UK because there is a Claims Representative in the UK then presumably a Frenchman having an accident in Gibraltar would get in touch with the Claims Representative of the United Kingdom and if he had the accident in the Orkneys he would get in touch with the same representative which would be equidistant from London. *[HON CHIEF MINISTER: Because he is a Claims Representative of the insurer not of the territory].* He is a Claims Representative of the insurer of another Member State, that is to say the French car that is responsible for the liability would enable the victim of the accident to put a claim in the place where the accident takes place, so that accident taking place in the Member State UK has one Claims Representative. The directive requires the UK to have a Claims Representative for the whole of the United Kingdom.

HON CHIEF MINISTER:

Mr Chairman, I think the hon Member is confusing the Claims Representative with the Information Centre. The information centre is a state thing. It does not have to be a state thing actually in UK it is actually run by the insurance industry. The Claims Representative is a representative of each insurer and each insurer has to have their own Claims Representative and it is not so that one can pursue a claim in the country where the accident has happened it is so that one can pursue a claim in one's country . The people who would benefit from the appointment of Claims Representative in the UK would be those UK residents who suffer a traffic accident or a pedestrian accident with a car when they are in the continent, come back to the UK and then can pursue their action in the UK by dealing with the foreign insurers Claims Representative in the UK.

HON J J BOSSANO:

I know. The point that I am making is if there is already a foreign insurers Claim Representative in the Member State UK and the legislation is drafted on the premise that we are not a separate place of residence that we are the UK then why is it that the Claims Representative of the foreign insurer in the UK that already covers the whole of the United Kingdom does not cover Gibraltar? Why do we need a separate one?

HON CHIEF MINISTER:

Mr Chairman, quite right because the obligation to have the Claims Representative is on the party that has the insurance. The insurance companies that cover Gibraltar motorists are UK licensed insurers and the obligation is to have a Claims Representative, obviously one is not going to need a Claims Representative in the country in which one is licensed, so that is the UK. One then has Claims Representatives in all the other EEA countries. The question arises which I understand is the one that we are discussing given that one does not need to have a Claims Representative in the country in which one is licensed which is in the UK but that one does need to have Claims Representatives in all the other EU and EEA countries, into which part of that equation does the territory of Gibraltar fall? Do we fall

as part of the territory in which they do not have to have a Claims Representative because it is part of the Member State that issued the licence which is a difficult concept given that we have our separate licensing regime or do we fall into the list of other countries, other than the State in which they have been licensed in which they are obliged to have a Claims Representative? That raises the issue which we are debating of whether Gibraltar is another country for EEA and EU purposes and I hear what the hon Member has said and the precedence that he has cited. My understanding is that whilst the Government will have their information office that principal insurers are not presently expecting to have to have Claims Representatives in Gibraltar.....*[HON J J BOSSANO: From UK.]*.....or from any other European country, for example, there is an Italian insurance company that underwrites motorists in Gibraltar, they are not planning to have a Claims Representative in Gibraltar for when Frenchmen have traffic accidents in Gibraltar involving a car insured by an Italian company.

HON J J BOSSANO:

Mr Chairman, the directive in fact says that every Member State has to take action to ensure that there is a Claims Representative other than the one that they have received their official authorisation. Now, we are legislating but it appears we are not legislating for them to appoint a Claims Representative in Gibraltar because they have already legislated in the UK so that the other Member States insurers already have a Claims Representative. We are not giving effect to the requirement in article 4 of the directive because article 4 of the directive is unimplementable in Gibraltar because it has already been implemented once in the Member State UK and in this particular directive we are told there is no distinction drawn between Gibraltar and the rest of the United Kingdom so, if there is already a Claims Representative appointed .....

HON CHIEF MINISTER:

.....what it says is in this part that I am referring to, 29 (3) the last paragraph and this is the only reference, this is the only implication that I can see from the issues that the hon Members have risen is that if one's accident is in the country in which one lives then one is not entitled to benefit from this directive and that begs the question, *"is London and Gibraltar part of the same EEA state for that purpose?"* But the legislation does not otherwise make the clear distinction. Another thing is that it might not be clear and it may raise the issue but it does not make the clear distinction that the hon Member has suggested.

HON J J BOSSANO:

But have we not just been told in the previous contribution of the Chief Minister that the law that we are debating in the House will not require Claims Representatives to be appointed in Gibraltar either from the UK or indeed from any other Member State, I distinctly heard the Chief Minister say that. If we are not legislating to do that then we are certainly not giving effect in this to article 4 that says "*.....each Member State shall take all the measures necessary to ensure that all insurance undertaking covering the risks classified in class 10 of point (a) of the annex to directives 73/239 EEC appoint a Claims Representative in each Member State other than the one that they have received official authorisation."* We are not doing that. We are not giving effect to that requirement.

HON CHIEF MINISTER:

We are in theory but not in practice because in practice there is no one carrying out this business in Gibraltar. If an Italian company came and established a vehicle insurance business in Gibraltar with a Gibraltar licence then they would have to appoint

a Claims Representative for Gibraltar. I did not say that we were not doing it, I said that the principle insurers the actual underwriters they are not expecting to have to do it and the reason why they are not expecting to have to do it is that they are not carrying out motor insurance business in Gibraltar and because they are not carrying out motor insurance business in Gibraltar the directive and therefore the legislation does not require them to have a Claims Representative appointed in Gibraltar but if there were, which there is not as we speak today, but if there were tomorrow somebody carrying out motor insurance business in Gibraltar, in other words, a Gibraltar licensed institution directly insuring motor risks that company, under this legislation that we are passing today, would have to appoint a Claims Representative. So the answer is that we are transposing the directive and we are doing it the same as everybody else but in terms of the appointment of Claims Representatives in Gibraltar it will have no immediate physical impact because in respect of that part of the legislation, the obligation on the part of insurers to appoint a Claims Representative in Gibraltar there are none as we speak today.

Clause 2

HON J J HOLLIDAY:

I have given notice that in clause 2 the definition of "*information centre*" the words "*to meet Gibraltar's obligations under*" have to be deleted and replaced with "*whether in Gibraltar or in other EEA States under Article 5 of*" should be inserted in subsection (1).

In the definition of "*motor vehicle liability insurance business*" insert the words "*and pure reinsurance of that class*" after the words "*Carriers' Liability*".

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

Clause 3

In section 29 (1):

(i) delete the words "*seeking to carry on, or carrying on*" and insert "*carrying on a motor vehicle liability insurance business and every person who seeks to carry on a*";

(ii) delete the word "*appoint*" in the third line and insert the word "*have*";

(iii) insert the words "*other than that in which they have received their official authorisation*", after the words "*EEA State*"; and

(iv) delete the words "*Article 1*" and insert "*Article 1 (2)*".

In section 29 (2):

(i) delete "*must*" and insert "*shall*" in the first line;

(ii) after the words "*information centre*" add "*in Gibraltar and in other EEA States*".

In section 29 (7):

Delete the word "*meaning*" and insert "*meanings referred to in*:"
In section 29 (8):

Subsection (8) is deleted and replaced with:-

"(8) Where a motor vehicle liability insurer does not have a Claims Representative in pursuance of subsection (1) the Commissioner may direct that the motor vehicle liability insurer shall not enter into new contracts of motor vehicle liability insurance business and if it subsequently appoints a Claims Representative the Commissioner may withdraw that direction."

In section 29 add new subsections (9) and (10) as follows:

(9) Any person seeking to carry on motor vehicle liability insurance business in Gibraltar shall not be entitled to carry on such business unless he complies with subsection (I).

(10) Any motor vehicle liability insurer who fails to comply with subsection (2) or any direction given under subsection (8) shall be guilty of an offence and liable on summary conviction to a fine up to level 4 on the standard scale.

In section 30 (1):

(a) delete the words "*its insured*" in the second line and insert "*an injured party*";

(b) delete the word *"on"* in the fourth line and insert *"or".*

In section 30 (2):

Delete the word *"insured"* in the fifth line and insert *"injured".*

In section 30 (4):

Subsection (4) is deleted and replaced with:-

(4) A claim for compensation shall only be quantified under subsection (1) (a), (2) or (3) if the injured party provides written evidence which substantiates or supports the amounts claimed.

After subsection (4) insert –

(5) If the receiving motor vehicle liability insurer, or its Claims Representative, does not comply with subsection (1) (a), (2) or (3), the motor vehicle liability insurer shall pay simple interest on any compensation eventually paid, unless interest is awarded by any court or tribunal which determines the injured party's claim.

(6) If subsection (5) applies, the amount of interest that the motor vehicle liability insurer shall pay shall be calculated as follows:-

(a) the interest calculated period –

(i) begins three months after -

(A) receipt of the claim for compensation, if the motor vehicle liability insurer or its Claims

Representative is in breach of subsection (I) (a), or

(B) any subsequent admission of liability, if the motor vehicle liability insurer or its Claims Representative complies with subsection (1) (a) but is in breach of subsection (2); or

(C) the subsequent receipt of a fully quantified claim for compensation, if the motor vehicle liability insurer or its Claims Representative complies with subsection (1) (a) and (2) but is in breach of subsection (3); and

(ii) ends on the date when the motor vehicle liability insurer pays compensation to the injured party, or the injured party's authorised representative;

(b) the interest rate to be applied throughout the period in paragraph (a) above is the Bank of England's base rate (from time to time), plus four per cent.

The original subsection (5) is renumbered as subsection (7). It is further amended by deleting the full stop after the word "*residence*" and inserting the words "*or establishment as the case may be*".

Clause 3, as amended in writing, 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 Insurance Companies (Amendment) Bill, 2003, has been considered in Committee and agreed to, with amendments, and I now move that it be read a third time and passed.

Question put. Agreed to.

The Bill was read a third time and passed.

ADJOURNMENT

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

Question put. Agreed to.

The adjournment of the House was taken at 11.45 am on Tuesday 21st January 2003.